United States Court of Appeals

for the Second Circuit

APPENDIX

74-2542

United States Court of Appeals

For the Second Circuit

Docket No. 72-1064

CHRIS-CRAFT INDUSTRIES, INC.,
Plaintiff-Appellant,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,
Defendants-Appellees.

Docket No. 72-1120

BANGOR PUNTA CORPORATION,
Plaintiff-Appellant,

against

CHRIS-CRAFT INDUSTRIES, INC.,
Defendant-Appellee.

Docket Nos. 72-1053 and 72-1140

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant,

against

BANGOR PUNTA CORPORATION,
Defendant-Appellee (Cross-Appellant).

JAN 3 1975
SECOND CIRCUIT

APPENDIX ON APPEAL FROM FINAL JUDGMENTS OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK

VOLUME III — Pages 759A to 1141A

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PAGINATION AS IN ORIGINAL COPY

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TABLE OF CONTENTS

	PAGE
Docket Entries (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp., et al.*)	1A
Docket Entries (*Bangor Punta Corp.* vs. *Chris-Craft Industries Inc., et al.*)	5A
Docket Entries (*SEC* vs. *Bangor Punta Corp.*)	7A
Opinion dated December 10, 1971 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*)	9A
Endorsement Opinion dated January 23, 1970 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*)	46A–1
Opinion dated December 10, 1971 (*Bangor Punta Corp.* vs. *Chris-Craft Industries, Inc.*)	47A
Findings and Opinion dated August 25, 1971 (*SEC* v. *Bangor Punta Corp.*)	65A
Memorandum dated September 17, 1971 (*SEC* vs. *Bangor Punta Corp.*)	91A–1
Memorandum on Settlement of Judgment dated November 17, 1971 (*SEC* vs. *Bangor Punta Corp.*)	91A–3
Final Decree dated November 17, 1971 (*SEC* vs. *Bangor Punta Corp.*)	92A
Statement of SEC—Exhibit A dated November 17, 1971	98A
Second Amended Complaint dated June 9, 1970 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*)	100A

PAGE

Answer and Counterclaim of defendants Piper to Second Amended Complaint dated September 1, 1970 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*) 133A

Answer of First Boston to Second Amended Complaint dated September 15, 1970 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*) 149A

Reply to Counterclaim dated September 24, 1970 (*Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.*) 156A

Answer of Bangor Punta Corp., David W. Wallace and Nicholas Salgo, defendants in *Chris-Craft Industries Inc.* vs. *Piper Aircraft Corp. et al.* 160A

First Amended Complaint dated January 26, 1970 (*Bangor Punta Corp.* v. *Chris-Craft Industries Inc. et al.*) 161A

Answer of Chris-Craft dated March 6, 1970 (*Bangor Punta Corp.* vs. *Chris-Craft Industries Inc. et al.*) 181A

Answer of Loeb, Rhoades & Co. and Shields & Co. dated April 27, 1970 (*Bangor Punta Corp.* vs. *Chris-Craft Industries Inc. et al.*) 188A

Complaint (*SEC* v. *Bangor Punta Corp.*) 194A

Answer dated October 14, 1970 (*SEC* vs. *Bangor Punta Corp.*) 201A

On the Organization of Pages 208A-757A 207A

Stipulated Findings of Fact in *Chris-Craft Industries Inc.* vs. *Bangor Punta Corp.* 208A

	PAGE
On the Orgaization of Pages 759A-810A	758A
Stipulated Findings of Fact in *SEC* v. *Bangor Punta Corp.*	759A
Stipulated Findings of Fact in *Bangor Punta Corp.* vs. *Chris-Craft Industries Inc., et al.*	811A
Transcript of Pretrial Conference of September 25, 1970	1102A
Transcript of Pretrial Conference of October 24, 1970	1112A
Trial Transcript	1117A
Dumaine Testimony	2230A
Letter from James Ryan, Esq. to Judge Milton Pollack, dated September 2, 1971	2312A
Letter from Robert Kushner, Esq. to Judge Milton Pollack, dated September 10, 1971	2315A
Letter from James Ryan, Esq. to Judge Milton Pollack, dated September 16, 1971	2317A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	70 Civ. 3940:MP
BANGOR PUNTA CORPORATION,	:	AGREED FINDINGS OF FACT
Defendant.	:	

1. On May 29, 1969, defendant Bangor Punta Corporation ("Bangor Punta") filed with the Securities and Exchange Commission ("the Commission") a registration statement which included two forms of prospectus in connection with a proposed offering of Bangor Punta securities for the common stock of Piper Aircraft Corporation ("Piper"). The registration statement became effective on July 18, 1969.

1A. The first form of prospectus included in the registration statement covered a general exchange offer (hereinafter referred to as "general exchange offer") by Bangor Punta to shareholders of Piper who were not parties to an agreement dated May 8, 1969, between Bangor Punta and 42 holders of Piper common stock. The second form of prospectus included in the registration statement covered a limited exchange offer by Bangor Punta to the 42 holders of Piper stock who were parties to the May 8, 1969 agreement. This limited exchange offer is not in issue in this action. An explanatory note in the

registration statement stated: "The forms of Prospectus for each of the offerings [i.e., the general exchange offer and the limited exchange offer] will be identical, except that the front cover will vary as set forth herein."

2. Bangor Punta caused prospectuses for the general exchange offer for Piper shares to be disseminated to Piper shareholders in the State of New York, among other states, by use of the mails among other means.

3. Bangor Punta's general exchange offer for the common stock of Piper expired at 5 p.m., July 29, 1969. Bangor Punta's shareholders approved the general exchange offer on August 7, 1969. On August 8, 1969, Bangor Punta commenced distributing its securities to Piper shareholders who had accepted the general exchange offer. The final prospectus for the general exchange offer stated (p. 2): "Until August 27, 1969, all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a Prospectus." Bangor Punta made no application to the Commission to shorten the period of time during which prospectuses may be required to be delivered.

4. Bangor Punta, through its general exchange offer of July 1969, obtained 111,628 shares of Piper or approximately 7% of the 1,644,790 shares of Piper common stock outstanding.

5. The financial statements contained in Bangor Punta's registration statement and preliminary and final prospectuses carried the investment of Bangor Punta in the capital stock of the Bangor

and Aroostook Railroad at $18,830,746 as at September 30, 1968 and $18,364,500 as at March 31, 1969. Note 1 to said financial statements stated:

> "The consolidated financial statements include the accounts of Bangor Punta Corporation (Bangor Punta--formerly Bangor Punta Alegre Sugar Corporation) and its subsidiaries, except for Bangor and Aroostook Railroad Company and its subsidiaries (the Railroad) and Prodco Finance Co. (Prodco). Investments in subsidiary companies, including the Railroad and Prodco, are adjusted annually for the equity in subsidiaries' undistributed earnings. All material intercompany items have been eliminated in consolidation.
>
> At September 30, 1965, the equity in the underlying net assets of the Railroad amounted to $29,791,456, which was $21,694,917 more than the then carrying value. Recognition of this excess was deemed appropriate but it was decided to limit the amount includible in stockholders' equity to $18,384,808 based upon a market price evaluation of the Railroad common stock. This resulted in increasing the carrying amount of the investment in the Railroad and stockholders' equity by $10,288,629. Such restated carrying amount of the investment was $11,406,648 less than the equity in underlying net assets. During the year ended September 30, 1966, the carrying amount of the investment increased by $749,983, representing the cost of 559 shares of capital stock acquired from minority holders and the equity in undistributed earnings for the year, to the amount of $19,134,791, or $11,449,312 less than the equity of $30,584,103 in the underlying net assets of the Railroad. During the year ended September 30, 1967 the carrying amount of the investment decreased by $336,488, representing the excess of dividends paid to the parent over the parent's equity in the earnings of the Railroad, to $18,798,303, or $11,451,123 less than the equity of $30,249,426 in the underlying net assets of the Railroad. During the year ended September 30, 1968 the carrying amount of the investment increased by $32,443, representing the cost of 120 shares of capital stock acquired from minority holders and the equity in undistributed earnings for the year, to the amount of $18,830,746, or $11,465,081 less than the equity of $30,295,827 in the underlying net assets of the Railroad."

The Bangor Punta registration statement and preliminary prospectus at page 27 and registration statement and final prospectus at page 29 contained the following statement under the heading "Description of Bangor Punta's Business": "Bangor Punta has operating units in the following industries; . . . transportation." The following appeared at page 32 of the registration statement and preliminary prospectus and page 34 of the registration statement and final prospectus:

Transportation

"The Bangor and Aroostook Railroad is an all-freight line owning and operating approximately 800 miles of track located wholly within the State of Maine, running from Searsport on the Atlantic Coast north to the Canadian border. On September 30, 1968, it owned, subject to security interests, or leased 45 diesel locomotives and 5,834 freight cars. Approximately 70% of the Railroad's freight revenue is derived from potatoes, paper, wood pulp and petroleum products. More than 99% of the freight hauled has either its origin or its final destination, or both, on the Railroad's line. The Railroad receives intense competition from highway carriers and also competes with Canadian railroads at several points on the line. It is a Class I carrier, subject to comprehensive regulation by the Interstate Commerce Commission with respect to rates, routes, accounting practices and other matters. About 1,100 persons are employed by the Railroad, 90% of whom are union members.

"In fiscal 1968, the Railroad accounted for 6% of Bangor Punta's total revenues and 1% of its operating income. Unaudited figures for the first six months of fiscal 1969 indicate that the Railroad accounted for 5% of Bangor Punta's total revenues and incurred an operating loss equal to 4% of Bangor Punta's total operating income. An operating loss of this magnitude is not unusual during the first half of the Railroad's fiscal year."

6. The minutes of the April 1, 1969 meeting of Bangor Punta's board of directors record the following concerning the Bangor and Aroostook Railroad (the "Railroad"), 98.7% of the stock of which was owned by Bangor Punta or its subsidiaries:

> "Organization and Long Range Planning.
>
> Mr. Salgo[1] stated that he wished to discuss with the Board the general philosophy of the types of business in which Bangor Punta should be involved, and also share with the Board some of the thoughts of management in this connection. He stated that there had been under consideration for some time the question of whether minority interests in some of the more attractive operations such as the Leisure Time and Public Security Groups, should be spun off, but that he, Mr. Robertson and Mr. Wallace are in unanimous agreement that this should not be done. Instead, there have been discussions about the possibility of spinning off, either in whole or in part, those companies where growth is not developing as rapidly as it is throughout the remainder of the Corporation. In particular he stated that such discussions had centered upon the Process Engineering Group, the Railroad and the Textile Group. In this connection, he pointed out that the Textile Group is a substantial contributor of cash even though it is not in a growth area. Mr. Salgo stated that the earnings of the Process Engineering Group are small and we need to seriously consider whether this group could be sold to another company. With respect to the Railroad, he stated that there is a question as to whether it should eventually go into a larger railroad system."
>
> "Mr. Salgo further stated that it would be very helpful if a committee from the Board of Directors could study the possible divestiture of the Bangor and Aroostook Railroad resulting in public ownership of it, either in whole or in part. He asked Mr. Curtis M. Hutchins to serve as Chairman and Messrs. George H. Seal and Robert G. Stone to serve as members of this Committee, with Mr. W. Jerome Strout as an ex-officio member and advisor to the Committee."

---

[1] Chairman of the board of directors of Bangor Punta.

7. Mr. Salgo testified concerning the committee referred to in the last paragraph of finding 6 (Salgo SEC Dep., pp. 17-24):

Mr. Von Stein: Was a decision initiated and recommended by the other members of the board and you?

Witness Salgo: I don't know if you take "initiated" to mean "by other members of the board"; or are you referring to "management" or "outside members"?

Mr. Von Stein: I am not specifying any group at the moment.

Witness Salgo: Management members, yes; outside members, not. There was nothing we knew about it, to the effect that outside members might have taken a very strong initiative. I must say that we had a full agreement, once the case was presented.

Mr. Von Stein: Where did the initiative come from?

Witness Salgo: From management.

Mr. Von Stein: And more specifically?

Witness Salgo: From operations, because there is where you have this funny feeling for how much control there is and prediction.

Mr. Von Stein: How was this brought to the board's attention?

Witness Salgo: Through a presentation--I don't know whether it was from me or Mr. Wallace.

Mr. Von Stein: On behalf of management?

Witness Salgo: Yes, on behalf of management.

Mr. Von Stein: You considered your role to be not only that of an analyst or judge of problems or initiatives by management, but also that of an initiator for the program?

Mr. Ryan: That question is highly improper, to my mind.

Witness Salgo: You said that I told you I considered myself a judge; but I said I considered myself as a catalyst--and I mean the word "catalyst" exactly in its chemical sense. I was looking for and extracting ideas and opinions, to pull them together into a

pattern and see whether they would correspond to our long-range aims. In some cases we may have had to compromise to reach a unanimous decision.-- That is not the function of a judge; and that is why I corrected your statement.--

Mr. Von Stein: But--

Witness Salgo: --In this procedure, I have all rights and obligations to initiate--

Mr. Von Stein: --and advocate?

Witness Salgo: Yes, and advocate hopefully for a unanimous idea--but sometimes not getting it.

Mr. Von Stein: Let's now carry this into the decision to sell the B & A. Where did the initiative of that idea come from?

Mr. Ryan: When you say "to sell" the railroad, do you mean what took place in October 1969; or do you mean to sell or distribute Bangor Punta's interest in the railroad?

Mr. Von Stein: To sell the railroad.

Witness Salgo: In general?

Mr. Von Stein: Yes.

Witness Salgo: It was probably since the origin of the railroad board--preceding even my getting involved with it before 1959--that the reason they hired me in 1959, as a consultant for diversification purposes, was that they felt that the railroad did not promise sufficiently for the corporation.

Mr. Von Stein: I think, that goes toward the broader avenue of the disposition suggested by your Counsel, as opposed to the narrower disposition, that I am referring to,--

Witness Salgo: Would you be more specific?

Mr. Von Stein: --of selling the railroad, as it was sold in 1969.

Witness Salgo: Okay.

Mr. Von Stein: Where did the initiative come from?

Witness Salgo: This particular initiative came definitely from the railroad itself, respectively, from the directors who seemingly had close historical ties with the railroad and who--or at least some of whom--took an active role in the matter, from the beginning of the year, so to speak, to analyze and seek ways of disposing of the railroad from the corporate portfolio.

Mr. Von Stein: Could you give us some specific names?

Witness Salgo: Yes--Mr. Curtis Hutchins, Mr. Seal, and Mr. Stone were named as a committee to study and recommend the disposition of the railroad. I think, that was in the first quarter of 1969--in April 1969.

Mr. Von Stein: Who chose this committee?

Witness Salgo: Technically, I think, I did. Effectively, I responded to a visible desire of a group on the board.

Mr. Von Stein: Did these three men choose themselves?

Mr. Ryan: He didn't say that.

Witness Salgo: I didn't say that.

Mr. Von Stein: No, he didn't say they did.--I merely asked that as a question.

Witness Salgo: I had contemplated that their desires would be negative and positive. But, when you are leading a group of people as their chariman, you have a certain feedback of what their desire is; and when you are put into the chairman's seat, you know what is up for action.

BY MR. BELKIN:

Q. What group of the board decided who these individuals should be?

A. I would say that everyone agreed on the board that these were the people who would know the most about the railroad, because they would have closer ties with the railroad--and that was what I called the "feedback." I thought they were the most desirable people to make the studies and reports.

Q. Could you say what particular expertise Mr. Stone had?

A. I think, his expertise consisted of his being a Bostonian who was familiar with New England problems, as a retired senior member of a very well-known brokerage company. He was a specialist in railroad securities and railroad-management appraisals and basically a very sound businessman. I have the highest regard for him.

Q. Do you know what particular expertise Mr. Seal had?

A. Mr. Seal was a Bostonian and was in New England for many years. He was a director of the railroad and a user of the railroad or supplier of the railroad for his company. I think, there was a very closely-knit tie with some members of the railroad's top-management.

Mr. Von Stein: Were these committee members, as well as the people with expertise for the functions for which they were appointed--were they also those members of the board who were at that time leaning toward the disposition of the railroad, more than other board members?

Witness Salgo: I can't answer that question; because my recollection is that there was an almost-unanimous desire expressed on the board to dispose of the railroad,--

Mr. Von Stein: In one way or another?

Witness Salgo: --one way or another, and within reason.

BY MR. BELKIN:

Q. Can you give us the time sequence on that?

A. What do you mean by that?

Mr. Von Stein: Was this unanimous desire voiced as of the time you appointed the committee?

Witness Salgo: It was strong enough to definitely want to receive some concrete suggestions, after many years of talking about the subject. In this respect, I think, there was a definite evolution at that point.

BY MR. BELKIN: At this point I would like to introduce, as Salgo Exhibit No. 1, a memorandum from Mr. Salgo to Mr. W. Gordon Robertson and Mr. David W. Wallace, dated March 26, 1969, --which was introduced during Mr. Flick's testimony as Flick Exhibit No. 1--which is attached to a letter dated March 13, 1969, from Mr. Robert A. Page to Mr. Nicolas H. Salgo. Will the reporter please mark this document as Salgo Exhibit No. 1.

(Said document was marked Salgo Exhibit No. 1.)

Q. Could you identify this Salgo Exhibit No. 1, please Mr. Salgo?

A. Yes, sir, I can.

Q. Can you tell us what it is?

A. This is an internal memorandum on the subject of the railroad disposition.

Q. Could you tell us why, at this particular time, you wrote this memorandum, and I am particularly directing myself to the second paragraph, where the first two words are "I believe." Was there any particular reason why you wrote this memorandum at that particular time?

A. Evidently, the apropos was this unsolicited letter from Mr. Robertson to Mr. Page, who was a director of the company. That is the only apropos that I can see.

Q. When you said that you believed the time had come to make a positive decision about a supplementary or separate use of the railroad, can you tell us why you believed this particular time had come?

A. Because we were talking about it for so long and evidently some of our shareholders also began to become restless about it--which restlessness was produced by this letter.

Q. Does this memorandum represent a turning-point in the thinking of Bangor Punta Corporation or your own thinking with respect to the railroad?

A. Absolutely not. I wouldn't say that I could describe it to you as one of these little drops even which I would consider in decision-making. There is no new event reflected in this memorandum whatever.

8. On May 12 and May 15, 1969, Curtis M. Hutchins, chairman of the committee appointed at the April 1, 1969 Board meeting, and a director and member of the executive committee of Bangor Punta, met with Frederic Dumaine, Jr., chairman of the Amoskeag Company, and discussed the possible sale of the Railroad to Amoskeag Company.

9. (a) Mr. Hutchins testified at his deposition by Chris-Craft concerning his meeting with Dumaine on May 12 as follows:

> Q. You did have a meeting with Mr. Dumaine on May 12th; is that right?
>
> A. Yes.
>
> Q. Do you recall where the meeting took place?
>
> A. At the Pinnacle Club, in New York.
>
> Q. Did you come into New York especially for the purpose of meeting with Mr. Dumaine?
>
> A. Living in New York--we live in New York in the winter and I was in residence, so to speak, and he came to New York from Boston.
>
> Q. Did you make any notes or memos of this meeting with him?
>
> A. No.
>
> Q. Do you recall it?
>
> A. Yes.
>
> Q. Can you tell us what happened at the meeting?
>
> A. Mr. Dumaine asked if Bangor Punta wished to dispose of the railroad, and I said I thought it might, and I said that it depended for how much--or what the price was, and he said he would offer five million dollars for it, and I said that that was an awfully low price

in relationship to what we were carrying the book on, but I would carry the message back to the management.

Q. Was that the whole conversation?

A. Yes, in essence.

Q. I think you misspoke when you said that you told him it was a low price in relation to what you were carrying the book on. I think you meant what you were carrying it on the books for.

A. That is what I meant to say.

At his examination by the SEC in the course of its private investigation, Mr. Hutchins testified concerning his meeting with Mr. Dumaine on May 12, 1969, as follows (pp. 27-28):

Q. What occurred at this first meeting on May 12th?

A. I told Mr. Dumaine that there was interest on the part of Bangor Punta in selling the railroad, and how much would he pay for it; was he interested, he said yes, and I said, how much do you want to pay for it, and he said $5 million.

Q. Did he say anything else of a substantive nature at that May 12th meeting?

A. No. I asked him, did he want to buy assets or stock, and he said he didn't care at that point.

Q. What was your response?

A. My response was that I would take it back to the management of Bangor Punta and the board and see whether or not they would accept it.

Q. What were your respective positions then at the conclusion of the May 12th meeting?

A. That he had made an offer for the railroad of $5 million, and I was to get back to him as to whether the offer would be accepted or not.

Q. At the time of the meeting what authority did you have, authority from Bangor Punta?

A. At the time of the meeting I had no authority, except to explore the various possibilities of divesture of the railroad.

I had no power of decision.

(b) Mr. Hutchins testified at his deposition by Chris-Craft concerning his meeting with Mr. Dumaine [illegible] 15, 1969 as follows:

Q. In fact, you did have a [illegible]ith Mr. Dumaine again between May 12th and May [illegible]; am I correct?

If you look in your diary of May 15th--

A. I had a meeting with Mr. Dumaine in Boston on May 15th.

Q. Do you recall whether you spoke to Mr. Wallace or Mr. Salgo about the Dumaine proposal between May 12th and May 15th?

A. I can't recall.

Q. Do you recall whether you took any action with respect to that proposal between May 12th and May 15th?

A. I just don't remember; what do you mean by "action"?

Q. Any studies, any analyses of it.

A. No.

Q. Did you report his proposal to the other members of your committee, Seal or Stone?

A. Yes.

Q. When did you report to them?

A. I had a meeting with Mr. Seal and Mr. Stone, a luncheon meeting the same Thursday, May 15th, and I do not recall whether that was prior or after seeing Mr. Dumaine that day.

Q. Did you go to Boston to meet with Mr. Dumaine?

A. Yes.

Q. What happened at this meeting?

A. I can't recall that anything happened other than his reaffirmation of the five million dollar price and that was his highest price, that he felt he could justify--I think it was at that meeting that I carried from Bangor to Boston some pertinent cash flow figures, balance sheet figures of the railroad, and a five-year forecast of the railroad, both cash and profit and loss for him to study. I think that was the purpose of the meeting. It was for me to deliver to him those papers.

Q. Did you try at this meeting to see whether you could get him to raise his price?

A. I am sure I did in a sentence or two, and I am sure in a sentence or two he said no.

Q. Did you have any discussions with him at this meeting about the possibility of there being a kicker in the event the railroad was turned around and showed profit?

A. Not at that meeting, no.

Q. Did you discuss it at the 12th?

A. No.

Q. Now, again, do you remember what you said to Mr. Seal and Mr. Stone on the 15th about your negotiations and discussions with Mr. Dumaine?

A. Yes; I reviewed with them his price. I reviewed with them the alternatives to accepting Mr. Dumaine's price and a sale to him and we came to the unanimous conclusion that the sale to Mr. Dumaine for five million dollars was, in our opinion, the three of us, the best course for Bangor Punta to pursue. [pp. 53-55]

In the SEC investigation Mr. Hutchins testified as follows

concerning his May 15th meeting with Mr. Dumaine (pp. 29-30):

Q. What occurred at this meeting? Do you recall?

A. I furnished Mr. Dumaine copies of five year forward budgets of the railroad, five year forward cash flows, which had been furnished to me by Mr. Strout, who was then president of the railroad, and went over them with him.

We discussed the possibility of his buying assets rather than stock.

At that stage of our knowledge of the tax situation, it appeared that it would be impossible for Mr. Dumaine to bypass that and still have the railroad survive as a profitable cash break even entity, and I think that's all.

I left him with the thought that he and his staff were going to study the material I had given him as a matter of information.

It had no effect on the offer originally made one way or the other.

Q. Had he asked for copies of budgets and cash flows at your May 12th meeting?

A. I don't remember, but it would be in the ordinary course of business, if he were seriously considering the railroad, he would want those, and whether he requested them or whether I offered them, I don't remember.

Q. Do you recall what his position was at this May 15th meeting with regard to the purchase of assets versus stock?

A. It appeared to both of us at the time, erroneously, that it would not be feasible for him to buy assets, so we continued to talk about sale of stock at that point.

Q. Could you tell me what you meant by that word, erroneously?

A. Further investigation indicated that Mr. Dumaine would have been able to purchase assets and have a sufficient depreciation to carry a forward cash flow sufficient to finance the enterprise.

10. The minutes of the executive committee meeting of Amoskeag Company on May 20, 1969 reflect the following:

> "President reported he had tentatively obligated the Company to pay $5,000,000 for Bangor & Aroostook Railroad, subject to Governmental Agencies' approval. Mr. Stone announced he was a director of Bangor Punta and would not take a position."

11. On May 20, 1969 J. Lushing, an accounting employee of Bangor Punta, wrote a memorandum to David W. Wallace and Stephen Galle, president and vice-president respectively, in which he stated:

> "I spoke this afternoon with Tom Wieler [partner in charge of the New York office] of Peat, Marwick, Mitchell & Co. regarding the accounting treatment on any loss on the sale of the B & A Railroad. The Railroad is carried in our financial statements at approximately $18.5 million and the sale for $5 million would therefore result in a loss of $13.5 million. It is assumed here that we sell the stock rather than the assets and, therefore, no consideration is given to any tax effect.
>
> "Mr. Wieler feels it would be very hard to charge this loss off directly to retained earnings. He feels it would be an extraordinary charge at the bottom of the income statement, i.e., similar to our gain on the sale of INA. It appears from the accounting bulletin that this sale would not meet any of the criteria for defining a prior period adjustment, which is the only type of an item which can be charged off directly to retained earnings. I mentioned the writeup we made of the Railroad for about $10 million in 1965, and whether we might consider the loss to the extent of this amount to be an adjustment of this. He is inclined to doubt this treatment. However, if we discuss it with the SEC and get it accepted, then I'm sure he would go along with it. You may be aware that the original writeup of the Railroad was a very sore point with the SEC at the time."

12. The minutes of the May 21, 1969 meeting of Bangor Punta's Board of Directors record the following concerning the Railroad:

BANGOR AND AROOSTOOK RAILROAD

Mr. Curtis M. Hutchins, as Chairman of a special committee appointed by Mr. Salgo at the Board of Directors meeting held April 1, 1969 (Reference: BPC-4-1-69-28), reported that he and Messrs. Robert G. Stone and George H. Seal (members of the special committee), have just completed a study of the situation with respect to the Bangor and Aroostook Railroad and wish to submit to the Board their unanimous report through Mr. Hutchins.

Mr. Hutchins stated that there appears to be three possibilities which could be adopted with respect to the future of the Railroad. Bangor Punta might keep the Railroad as is, merge the Railroad with another railroad if that were possible, or sell the Railroad at the best possible price.

Mr. Hutchins stated that keeping the Railroad is not very appealing. He pointed out that because of the increased use of trucks and the restricted nature of the territory involved, it is doubtful that the traffic on the Railroad will increase. It appears that if the Railroad is to break even over the next five years, it will be necessary to spend substantial amounts of money for new freight cars and other equipment. He also stated that in discussing the situation with Mr. W. Jerome Strout, President of the Railroad, it appears that the amount of money to be expended might be as much as $5,000,000. Under these circumstances, Mr. Hutchins pointed out that it becomes more and more difficult to justify retention of the Railroad.

Mr. Hutchins next discussed the second possibility, that is, consolidating with another railroad. In this connection, he felt that a combination with the Boston & Maine Railroad, if otherwise possible, might result in Bangor Punta's receiving a third to a 40% interest in a new company. The consideration, however, would be in the form of securities rather than cash. Mr. Hutchins did not feel that this would be a palatable solution.

Mr. Hutchins next considered the question of selling the Railroad and to whom it might be sold. He pointed out that neither the Penn Central nor the Norfolk and Western Railroads have any known interest in the Bangor and Aroostook Railroad and a merger with either of these railroads is very

unlikely. He stated that the only person whom he knew who might be interested in the Railroad is Mr. F.C. Dumaine, Jr., Chairman of Amoskeag Company. Mr. Hutchins stated that he has had preliminary discussions with Mr. Dumaine who had indicated that he might be willing to pay $5,000,000. in cash, a combination of cash and Bangor Punta securities, or Bangor Punta securities for the stock of the Bangor and Aroostook Railroad owned by the Corporation. At this point, Mr. Salgo asked whether it might be wise to offer to Mr. Dumaine 51% of the stock of the Bangor and Aroostook Railroad at book value, with an option to purchase the remaining 49% at a higher price, with a total consideration, therefore, of approximately $7,000,000.

(At this point, Mr. Flick was called away from the meeting and Mr. Wallace acted as Secretary for the remainder of the meeting.)

Mr. Hutchins stated that, in his opinion, Mr. Dumaine would not agree to a price of $7,000,000., but that he probably would be able to obtain the approval of the Board of Directors of Amoskeag Company at a price of $5,000,000.

Mr. Hutchins stated that he is not asking for an approval by the Corporation's Board of Directors at this time, but only the authority to continue discussions with Mr. Dumaine. He stated that he wishes to first ascertain whether Amoskeag Company is willing to submit a definitive proposal.

Mr. Salgo next suggested that he would like to have Mr. Dumaine transfer to the Corporation 22,500 shares of Bangor Punta $1.25 Convertible Preference Stock as consideration for an option on 51% of the Railroad, the option to be for sixty days with the provision that the stock would be forfeited if the option is not exercised. In discussing Mr. Salgo's proposal, Mr. Strout pointed out that Mr. Dumaine also wishes to enter into an arrangement with the Maine Central Railroad; he does not believe the Maine Central Railroad will agree if such an agreement existed between Amoskeag Company and Bangor Punta Corporation.

After considerable discussion, it was the consensus of the Board that Mr. Hutchins should attempt to negotiate on the 49/51% basis suggested by Mr. Salgo, but that he has the authority to negotiate on the basis of a sale of 100% of the Bangor and Aroostook Railroad subject to further investigation of accounting and tax ramifications of such a transaction and approval by the Board of Directors or the Executive Committee of the Board of Directors.

13. Mr. Hutchins testified as follows at his examination by the SEC concerning, among other things, his report on May 21, 1969, to the Bangor Punta board of directors (pp. 13-18):

> Q. Was this the first time, May 21st that you had reported to the board of directors?
>
> A. Yes.
>
> Q. What methods of disposition were looked into by your committee, and you can refer to this--the minutes here, which is Exhibit No. 2 for identification for any refreshing of your recollection that you might need.
>
> Mr. Ryan: Off the record.
>
> Mr. Belkin: Off the record.
>
> (Discussion off the record.)
>
> MR. BELKIN: Back on the record.
>
> A. There are three possibilities for disposing or handling the railroad situation.
>
> One was to keep it and continue to operate it indefinitely.
>
> The second was to merge it with another railroad, and the third was to find a buyer.
>
> We felt it not advantageous--our committee felt it was not advantageous to Bangor Punta to continue operating the railroad because profits--the possibility of adequate return on the investment seemed impossible to obtain.
>
> The railroad would require large amounts of capital to keep it going, and the manner in which a good railroad ought to be operated, and we cast that aside as being an alternative we didn't like.
>
> The second possibility was to merge it with another railroad.
>
> In short that seemed impossible to do, because the Maine Central, our neighbor, had been approached over a 10-year period with no positive results, and going a step away, the Boston & Maine Railroad was in great difficulty.

Another step away there seemed no likelihood, New York Central and Pennsylvania, later to become the Penn Central, or the Norfolk or Western would be interested in acquiring it.

So, therefore, a sale seemed to be the most promising alternative.

Now, we so recommended to them we had a possible buyer in Frederic C. Dumaine of the Amoskeag Company, with whom I had been in touch, and who had offered us $5 million for the railroad, and I so reported to them and gave that recommendation to them as a recommendation of the committee with which the other members agreed, other members of the committee agreed.

Do you want this back?

Q. Yes.

In terms of the time sequence, could you tell us--you said there was little likelihood of a merger--when this became apparent, the fact that there would have been little likelihood of merger?

Was this at this May 21st meeting that it was already apparent to you?

A. Yes. It had been apparent to me for some years or some months, and it was a recapitulation of opinions I had built in.

Q. Were there any other possibilities discussed or considered by your committee, any other possibilities with respect to the disposition of the railroad?

A. No.

Q. How did you or the committee limit yourself to these possibilities; in other words, either keeping the railroad, merging it or selling it?

A. Our minds could not conceive of any other alternative. We came to the end of the road.

Q. Did anyone ever consider spinning off the railroad at around this time, early 1969? Do you recall?

A. I don't remember the time sequence. Mr. Salgo had offered the suggestion that the best could be had by declaring a dividend in the form of railroad stock.

The committee never seriously considered that.

Q. Could you tell us why not?

A. It seemed the last resort kind of a disposition.

Efforts were made to keep the railroad and its organization, its employees, and its service to the public intact, so that if--the next owner would be operating a railroad in the same manner it had been operated over the years as a good going concern.

Q. You mentioned the possibility of merging the railroad with another railroad. You mentioned that in the minutes of May 21st.

A. Yes.

Q. Could you tell us how that would have worked out; in other words, what your thinking was at the time, if a merger had occurred?

A. Since 1959 I had tried to merge the Bangor & Aroostook with Maine Central, because together they will then serve the State, whole state of Maine, with a saving of a substantial amount of overhead, and if the operating of the trains had been merged, the track work had been merged, the cars had been merged, I thought it would--the joint enterprise could save on the order of a million dollars a year, and I felt it was a thing highly to be desired, though I never could accomplish it.

Q. What was ~~your~~ barring your path to the merger?

A. The management of Maine Central did not seem to be as eager for it as I did, and they refused to negotiate seriously about it.

Q. Had the management of the Maine Central changed from 1951 through 1969?

A. No. I might be able to correct that, it was '53 instead of '51. It's whenever Spencer Miller became president. I can't remember whether it was '51 or 1953.

Q. Now, there was one offer mentioned at this meeting of May 21st, Mr. Dumaine's offer?

A. Yes.

Q. Were there any other offers for the railroad discussed at this meeting?

A. No.

Q. Were there any other offers outstanding at this time that your committee knew about?

A. No.

Q. What was your reaction to the offer of $5 million by Mr. Dumaine--

A. I thought--

Q. (Continuing)--in view of the fact that your investment was a good deal more?

A. I felt that Mr. Dumaine was the only logical customer for the railroad.

He offered $5 million for a railroad which was then earning $ 50,000 a year, and on a value based on a reasonable multiplier, it seemed to me to be an ample offering.

Q. Do you know how he arrived at his figure of $5 million?

A. No, I don"t.

Q. Did you ever ask him?

A. What?

Q. Did you ever ask him?

A. No.

Q. Was there any surprise registered on the part of anyone at this meeting on May 21st that the offer was $5 million?

A. I feel there was a sense of disappointment that it wasn't more only.

14. Mr. Hutchins testified as follows at his examination by the SEC (pp. 41-43) concerning his discussions with Mr. Dumaine of the suggestion by Mr. Salgo at the May 21 board meeting or Punta that "it might be wise to offer to Mr. Dumaine 51% of stock of the Bangor and Aroostook Railroad at book value, with an option to purchase the remaining 49% at a higher price, with a total consideration, therefore, of approximately $7,000,000":

Q. In the minutes of May 21st there is a suggestion of a counter proposal--

A. Yes.

Q. (Continuing)--by Mr. Salgo, I believe.

A. Yes.

Q. Did you ever relay that counter proposal to Mr. Dumaine?

A. Yes.

Q. When?

A. I don't remember. That was May--just a minute. Let me refer to my notes.

It must have been by telephone between May 21st and May 27th. I don"t recall the time.

Q. Do you recall what his response was?

A. Yes. He said no.

Q. Did he give any reason as to why he said no?

A. No. He just said he had made up his mind what he was going to do, substantively as I reported in the letter of May 27th.

He said that's all he'd do.

Q. In other words, he didn't promise to pay maybe a little more than 5 million?

A. He said flatly he wouldn't.

Q. Did you ask him why he was so adamant about 5 million?

A. No, in the sense that that's his business.

Q. Did anyone ask you whether you had reported the counter proposal to Mr. Dumaine, anyone on Bangor Punta's board or management?

A. I don't recall anything specific. I am sure having been asked to make that proposal to Mr. Dumaine, that when he said no, I must have reported it to someone, and I would guess it was Mr. Robertson who was then chairman of Bangor Punta, on the assumption that he would relay it to his associates, Mr. Wallace and Mr. Salgo.

I don't recall talking with anyone about it in the management of Bangor Punta, except Mr. Robertson.

15. On May 27, 1969, Hutchins delivered to Dumaine an unsigned document dated May 27, 1969 on the letterhead of Bangor Punta

reading as follows:

May 27, 1969

Mr. F.C. Dumaine, Jr.
President
Amoskeag Company
Prudential Center
Boston, Massachusetts 02199

Dear Buck:

I understand that you and I have agreed, subject to appropriate approval by the ICC, on the sale to Amoskeag of all Bangor and Aroostook Railroad stock owned by Bangor Punta on the following basis:

1. A sale price of $5,000,000., payable by delivery of all Bangor Punta $1.25 convertible preference stock now owned by Amoskeag (approximately 22,000 shares), plus Bangor Punta common stock sufficient to make up the difference to $5,000,000. The preference stock would be valued at the market at the time of closing and the common would be valued at its actual cost to Amoskeag--or $5,000,000. in cash, at our option.

2. A fifty-fifty split between Amoskeag and Bangor Punta of any "windfall profits' accruing to Bangor and Aroostook Railroad through real estate or industrial developments in the Searsport area with particular reference to a proposed aluminum plant which would result in large scale commercial increments in profit or land development sales on Cape Jellison or Sears Island-during the next five years, if such incremental "windfall profits" prove to be substantial and significant.

The Railroad has outstanding 179,810 shares of stock of which all but 2,354 are owned by Bangor Punta (about 98.7%). Of the remaining shares, 1200 are owned by one person and his wife; and the balance is owned by about 20 other people.

Although I have general authority from the Bangor Punta Board to make tentative exploration regarding the sale of the Railroad, any understanding between you and me is subject to the Board's approval. I expect you may want the same understanding regarding the Amsokeag Board.

To: F.C. Dumaine, Jr.

May 27, 1969
Page Two

I suggest, too, for employee moral purposes that no publicity be given to any tentative understanding between us until a definitive deal is ready to move ahead.

I will leave this letter with you with the thought in mind that if I do not hear from you within the next day or two that your understanding squares with mine.

Yours Sincerely,

Curtis M. Hutchins

Hutchins testified at his deposition by Chris-Craft concerning the foregoing document as follows:

Q. If I tell you on May 29th and June 2nd Mr. Dumaine, Sr.'s diary reflects telephone calls to you, would that in any way refresh your recollection of when you managed to speak to the father?

A. Let me organize myself on dates.

I wrote Mr. Dumaine a letter which reflected an understanding between him and me and which included a recapture of Bangor Punta if Sears Island was sold. It was then under option to a company that hoped to build an aluminum plant.

MR. LIMAN: Mark this Chris-Craft Exhibit 128

(Letter marked Chris-Craft Exhibit 128 for identification, as of this date.)

Q. Have you seen Exhibit 128?

A. Yes.

I had talked to Mr. Dumaine on May 27th. I was confusing my meeting with him on the 12th.

I did go down on May 27th and talked with him.

Q. On the telephone?

A. No, I went to Boston. I handed him that letter and we discussed the conditions and he said they were agreeable.

Q. That is Junior?

A. No, Senior. Senior is junior. Dudley is the son.

Q. You discussed it with the father, the terms of this letter, and he said this was acceptable?

A. Yes.

Q. Did you leave a copy of this with him?

A. I did.

Q. He said it was acceptable?

A. Yes.

Q. Can you tell me if you recall whether you signed it?

A. I did not.

Q. Was there a reason?

A. I felt that, on reflection, having written it, this reflected a meeting of the minds between him and Mr. F. C. Dumaine, Jr., as to the agreement he and I, on a personal basis had reached, and it was not a thing I could commit Bangor Punta or its board to, so I left it unsigned.

Q. You did have in a letter a statement that the agreement was subject to the approval of your board?

A. Yes.

Q. Did you discuss this letter with anybody at Bangor Punta before you gave it to Mr. Dumaine?

A. Yes, I sent a copy to Mr. Robertson, whose office is in Bangor, where my office was, and I sent him down a copy after it was transcribed.

Q. Did he make any changes?

A. No, he made no changes, but he said that this might not receive concurrence from the Bangor Punta management, so why didn't I leave it unsigned, which I did.

Q. Did you discuss it at all with any other officials of Bangor Punta?

A. No. Not that I recall.

Q. Did you disclose to any of the members of Bangor Punta management, after May 27th, that you had given this letter to Mr. Dumaine, other than Mr. Robertson?

A. I assume I must have at the meeting in New York of June 3rd, at which the other two members of Bangor Punta's management were present.

Q. Did anybody at that meeting ask you to recall this letter?

A. No.

Q. Did anybody tell you that you should send them a letter nullifying this?

A. No.

Q. How was it left in connection with this letter?

A. It was left that Bangor Punta management could not agree to it until it had had a considerable amount of time to explore the tax impact or the ameliorating effect on Bangor Punta's earnings statement of the sale of the assets, and I so reported that to Mr. Dumaine.

Q. When you say its sale of assets, you are talking about a change in form in the transaction?

A. Yes. This contemplated a sale of stock; I think I said that.

Q. I take it, then, nobody criticized you for having given him this letter?

A. No.

Hutchins testified during his examination by the SEC as follows concerning the above document:

Q. Well, do you recall the next time that you were in contact with Mr. Dumaine?

Mr. Ryan: Either by telephone or face to face?

Mr. Belkin: Yes.

Q. I met with him in Boston on May 27th, and I must have been on the telephone--telephonic communication in order to make the date.

I don't recall any other phone calls specifically, no.

Q. What was the purpose of the meeting of May 27th? Do you recall?

A. Yes. I had written Mr. Dumaine a letter giving him my understanding of the arrangement we had made for the sale, and suggested to him some other specific arrangements, as I remember it, to do with his paying part of the purchase price and some stock he held in Bangor Punta, and also reserving in Bangor Punta any windfall profits which might occur in the future, on the sale of some of our real estate.

Q. Had you and he agreed to these additional items, this windfall of profits, and you mentioned one other item prior to that, had you agreed to these or discussed these--

A. He and I did, yes.

Q. (Continuing)--at these various meetings?

A. No.

Mr. Ryan: Would you repeat that question and answer back again, please? I think there is some confusion.

(Whereupon, the last question and answer were read back by the reporter.)

Mr. Ryan: Did you and he agree or discuss, that's the problem.

Q. Let me backtrack and ask you whether you and he had discussed the windfall profits and the--that one other item that you mentioned.

A. He and I had not discussed, I think, to the best of my knowledge, the windfall profits.

I think you refreshed my memory now that I did have a telephone conversation with his son, Dudley Dumaine, on the payment--using stock he owned in Bangor Punta as payment, as to what price it would be tendered at or--yes, at what price would be used, that method of payment.

I believe I did do that.

Q. All right.

Mr. Belkin: At this point I would like to introduce a letter on the Bangor Punta Corporation's stationery dated May 27, 1969 from Curtis M. Hutchins to Mr. F.C. Dumaine, Jr., President, Amoskeag Company.

This would be Exhibit No. 6 in Mr. Flick's testimony.

Mark that as Exhibit No. 5 for Mr. Hutchins.

(Whereupon, the above-referred to document was received and marked by the reporter as Hutchins' Exhibit 5 for identification, as of this date.)

BY MR. BELKIN:

Q. Could you identify this letter, Mr. Hutchins, please, which is Exhibit No. 5 for identification?

A. I do.

Q. Will you tell us, is that the letter that you had previously referred to--

A. Yes.

Q. (Continuing)--as the letter that you delivered?

A. Yes.

Q. You state in the letter that--in the first sentence--"That I understand that you and I have agreed," and then you list the items to which you had agreed.

Previously I believe you said you had not discussed certain items, one of them being the windfall profits.

A. I don't recall that I did.

Q. Could you explain why you state in the letter that you and I have agreed, when you state you don't recall having previously discussed these items?

A. Because I assumed that he and I would agree upon it, and we did, as I remember, on May 27th.

Q. You did what on May 27th?

A. Agreed on the windfall profits.

Q. In other words, May 27th you and he agreed as to what you wrote in the letter, that should a sale--should a consummated sale occur, that those would be the terms?

A. Yes.

Q. Do you recall what else occurred at this meeting on the 27th of May, if anything else occurred?

A. I don't recall anything.

Q. Whose idea was it to send the letter?

Mr. Ryan: I don't think there is any testimony that the letter was sent. It was hand delivered.

Mr. Belkin: Okay.

Q. How did Mr. Dumaine receive this letter?

A. I handed it to him.

Q. Whose idea was it to give this letter to Mr. Dumaine?

A. Mine.

Q. Why did you feel a letter was required?

A. Because--

Mr. Ryan: You mean, what was the purpose of the letter?

Mr. Belkin: Yes. Why you felt that there had to be a letter between the two of you?

A. I thought it was useful to have an understanding on paper so that if negotiations should proceed further, that we understood each other at that point, particularly in regard to the payment of stock and the windfall profits.

Q. Had you, Mr. Hutchins, and--strike that.

Had you and Mr. Dumaine agreed to the sale of the railroad according to the terms of the letter of May 27th, subject to the approval of your respective boards?

Mr. Ryan: Will you repeat that question, please.

(Whereupon, the pending question was read back by the reporter.)

Mr. Ryan: I think that question is almost impossible to answer unless you know what you mean by agreed.

In other words, if you mean did Mr. Hutchins agree and Mr. Dumaine agree as to what the terms were going to be, were going to be presented to the board is one thing.

The witness: That's right.

Mr. Ryan: That would be one answer, and then you can talk about agreement as to being some sort of legal obligation.

Mr. Belkin: Well, the first person to use the word agree is in the letter, and--

Mr. Ryan: Yes, but the letter was written by a layman, not by a lawyer, and yet you are asking questions as a lawyer--you know--of a layman, and so I think you are going to get a confusing record as to--on this subject.

Repeat the question, and I will let him answer it, but I think it's not going to be a clear answer.

The agreement, as agreed--the agreement has legal connotation to it, and also to a layman it means one thing, and to a lawyer it means another.

BY MR. BELKIN:

Q. What did you mean in your letter when you used the word "agreed" Mr. Hutchins?

A. That he and I had a meeting of the minds, that should proceedings continue, that this would be the basis of them--

Q. All right.

A. (Continuing)--as far as he and I were concerned.

Q. If you can answer that question that I have asked, in light of your now definition of how you accept the word agreed, then I think the record would be clear, and if you can read that question back again, or I will re-ask it again rather than read it back.

Had you and Mr. Dumaine agreed to the sale of the railroad, according to the terms of the letter of May 27th, subject to the approval of your respective boards?

A. Subject to the approval of the respective boards, and subject to the approval of Bangor Punta management.

Q. Now, did you go to the board after the letter or after this meeting of the minds immediately?

A. No.

Q. Why not?

A. Because Bangor Punta management had questions about the transaction and felt that an arrangement more favorable to Bangor Punta might be negotiated, and wished to explore in depth the tax effect on Bangor Punta, particularly in respect to the comparable tax effect of sale of assets versus the sale of stock.

Q. You said the Bangor Punta management had questions about this transaction or--

A. Had reservations as to whether this transaction was in the best interest of Bangor Punta.

Q. Being a transaction with Mr. Dumaine?

A. Yes, the transaction as outlined in the letter of May 12th--

Mr. Stewart: 27th.

The witness: 27th.

Mr. Ryan: 27th.

Q. Well, how were they made aware of the terms expressed in your letter of May 27th, the people on the board of directors?

Mr. Ryan: What was the last part of that?

Mr. Belkin: The people on the board of directors--the people--

The witness: The management.

Mr. Belkin: The management.

Mr. Ryan: The management.

Mr. Belkin: Right.

A. I think I communicated it by telephone initially to Mr. Robertson, and thereafter I don't remember to whom.

Mr. Ryan: If you will show Mr. Hutchins Exhibit No. 5, it indicates that a copy of it was sent to Mr. Flick, a copy of the letter.

Do you recall?

The witness: I would say it would be him.

Mr. Ryan: In other words, I think you will find copies of that was sent to--at least to Mr. Flick, if not others.

BY MR. BELKIN:

Q. Do you recall what Mr. Robertson's response was to the letter?

A. Mr. Robertson, I think, was in agreement with my letter covering the meeting of the minds, but told me that Mr. Salgo and Mr. Flick had the reservations about this being an advantageous arrangement for Bangor Punta, as I described earlier.

Q. Did you speak with Mr. Salgo or Mr. Flick directly?

A. Yes--well, I met with--

Mr. Ryan: When?

Q. (Continuing) With regard to any objections that they may have had?

A. Yes. I met with them in New York on June 3rd.

Q. Do you recall speaking with Mr. Dumaine shortly after this letter of May 27th?

A. I don't recall. I may well have. I don't recall.

Q. In your last sentence in this letter you state:

"I will leave this letter with you with the thought in mind if I do not hear from you within the next day or two, that your understanding squares with mine."

Do you recall whether there was any communication shortly thereafter between yourself and Mr. Dumaine?

A. I must have called him after the June 3rd meeting and told him that we could not give him firm confirmation of the deal, because we needed time to explore the tax matters.

I must have called him, yes.

Q. Why did you--was the letter signed that you--

A. No.

Q. Why did you deliver the letter to Mr. Dumaine unsigned?

A. I sent a copy to Mr. Robertson the day before I went down, and he, I think, conferred with Mr. Flick, and they reminded me that I had no authority to confirm a deal, so I felt it better be in the form of an unsigned letter, which carries the weight of a memorandum, if you will.

Q. And this is what Mr. Robertson came back to you--

A. He came back to me with the admonition or the reminder that I did not have authority to make a binding deal.

Q. Did he indicate he had talked with anyone to get this advice?

A. Yes. I think he talked to Mr. Flick.

Q. Did he tell you that or is this just--

A. I don't recall.

Q. Did you speak with Mr. Flick directly about this letter?

Mr. Ryan: About what?

Mr. Belkin: About this letter, either sending it unsigned or sending it--anything about this letter.

A. No. If there was any communication, it was a transmittal letter sending it to him as a matter of information.

I did not have a conference or talk to him to my recollection. I am sure I didn't.

16. Hutchins at his deposition by Chris-Craft testified concerning a meeting held on June 3, 1969 between Hutchins, Salgo, Wallace, Robertson and Flick as follows:

Q. Did anybody report to you that a Mr. Wieler of Peat, Marwick had been consulted on or before May 29th, 1969, regarding the accounting treatment, at a loss of selling the railroad for $5 million?

A. No.

Q. Is today the first time you were aware of the fact that he had been consulted?

A. Mr. Wieler?

Q. Yes. As shown in this memo.

A. No, today is not the first time.

Q. When did you become aware that Mr. Wieler was consulted?

A. At a meeting in New York, at the Bangor Punta offices on June 3rd, a discussion was had with the top management of Bangor Punta. Mr. Wallace, Mr. Robertson and myself, possibly Mr. Flick and Mr. Salgo, talked with Mr. Wieler.

Q. Was he at the meeting, too?

A. No, on the phone, on a conference call, and I heard Mr. Wieler's comments to that general effect as expressed in the exhibit.

Q. What was the purpose of this meeting--on what date did you say?

A. June 3rd.

Q. On June 3rd.

A. I think the purpose of the meeting was to discuss the effect on Bangor Punta of the sale of the railroad for $5 million in cash.

Q. You said--

A. To Dumaine, the effects on Bangor Punta of the sale to Dumaine for $5 million in cash.

Q. Had you reported to the management of Bangor Punta before June 3rd that you had not succeeded in improving the sale price with Mr. Dumaine?

A. I must have, and it must have been by telephone, and I assume I summarized my conversations with him on June 3rd.

Q. What was said concerning the situation?

A. Whether Wieler's report that the loss involved, the book loss involved from $18 million odd down to $5 million would have to be shown as a loss on the income statement of Bangor Punta.

Q. Did anybody express concern about that at the meeting?

A. Yes.

Q. Who?

A. I think all three of the management people did.

Q. By the three, you mean Messrs. Salgo, Wallace and Robertson?

A. Yes.

Q. Was there a discussion of whether different accounting techniques could be used to avoid showing such a loss?

A. There was discussion as to whether a different effect would be had if assets were sold rather than stock and a determination made that an examination in depth should be made on the effect of selling assets rather than stock.

Q. Selling the assets to Mr. Dumaine?

A. Rather than selling him stock.

Q. The assets for this price, rather than the stock for this price?

A. Yes.

17. The minutes of the August 7, 1969 meeting of Bangor Punta's board of directors record the following concerning the Railroad:

OPERATIONS AND ADMINISTRATION

* * *

> Mr. Salgo also informed the Board that in the overall planning of the management of the Corporation, it is deemed advisable that we should dispose of certain assets which no longer appear to fit into the growth pattern of the Company. These would consist of the Railroad, the Process Engineering Group, which it is believed could be sold in components at a better aggregate price then if sold as one entity, and the Textile Group. It is essential, of course, that the Corporation achieve real hard values for these companies.

18. The minutes of the August 28, 1969 meeting of the Amoskeag board of directors contain the following concerning the Railroad:

> Board informed Bangor Punta is prepared to sell its investment in Bangor and Aroostook R.R. in September. After discussion and upon motion duly made and seconded, it was
>
> VOTED: to ratify, confirm and approve the action of the President in committing Company to purchase from Bangor Punta Corp. its investment in Bangor and Aroostook R.R. for $5,000,000 and to authorize him to take such action and to do such things as may be necessary or desirable in order to execute said purchase.
>
> (Mr. R. G. Stone took no part in aforementioned discussion and was recorded as not voting.)

19. Mr. Hutchins testified at his examination by the SEC that on August 28, 1969, he met with John M. Coward in Boston (p. 61).

The meeting was suggested by Mr. Robertson, the then ~~vice-chairman~~ co-chairman of the Bangor Punta board of directors. Mr. Hutchins testified as follows concerning the discussions with Mr. Coward (pp. 61-63, 66-70, 72-75):

> Q. Did he [Mr. Robertson] tell you anything of a substantive nature that Mr. Coward had stated in terms of what he might be offering?
>
> A. No, except that he was a man of substance and thought he wanted to buy the railroad, and as an alternative buyer, I should, as a matter of diligence, contact him, which I did.
>
> Q. When was the first contact with Mr. Coward?
>
> A. My only contact with Mr. Coward was on Thursday, August 28th.
>
> Q. I see. All right.
>
> What occurred at that meeting?
>
> A. I met him at the State Street Bank in Boston, and he offered more money than Mr. Dumaine--I don't remember how much, but it was substantially more money, and I asked him why he wanted to buy the railroad, and the reasons he gave me were so out of accordance with the facts that I concluded that in spite of what he said, the partners who were engaged with him would, upon serious look at the situation, not want to do it.
>
> He gave as a reason for wanting to buy it that Maine is a growth state and growth area, and he thought the Bangor & Aroostook area was a growth area.
>
> I do know something about the area, and it's fairly opposite.
>
> I said, in what way is it going to grow?
>
> He said, all the copper mines up there--we don't have any. People are exploring for minerals, but it's all over the western part of the state, and nothing has been found of any substance, and he feels that the Machiasport situation that Occidental proposed down there would be helpful to the railroad; that was nowhere near our line, and he is uninformed about the territory, and I concluded any offer he might make on behalf of himself and other people associated with him wouldn't hold up, and therefore, the offer was not a substantive one.

Q. Do you know who the other individuals were--

A. No.

Q. (Continuing)--he was associated with?

A. No.

Q. Did you ask him?

A. No.

Mr. Belkin: At this point I'd like to introduce into the record a letter dated September 18, 1969 to Mr. Curtis M. Hutchins from John M. Coward.

Would the reporter mark this as Exhibit No. 7.

(Whereupon, the above-referred to document was received and marked by the reporter as Hutchins' Exhibit 7 for identification, as of this date.)

BY MR. BELKIN:

Q. Could you identify Exhibit No.7, please, Mr. Hutchins? (Handing to witness.)

A. Yes, I do.

Q. Could you tell us what Exhibit No. 7 is?

A. Exhibit No. 7 is a letter from Mr. Coward reiterating his interest in the railroad and making a specific offer of $10 million.

Q. Does that offer, which is contained in the letter, was that what his offer contained in your August 28th meeting, or was there any changes?

A. Substantially so. I don't recall they were exactly that. Substantially that.

Q. Did you get this letter on the letterhead of a corporation, do you recall, because this apparently is a copy--

A. Yes.

* * *

Q. Did you feel when Mr. Coward approached you that he couldn't finance the $10 million?

A. No. I wasn't--

Q. I am trying to understand your feelings as to your reaction to the $10 million.

Q. Well, I felt this way about it:

On his statement that he had other partners in it, presumably their examination of the railroad situation would cause them not to put up the money.

I don't disbelieve Mr. Coward's ability to get the money, as far as getting cash together is concerned.

A railroad earning about of $50,000 a year, or let's say a plump break even over the five-year period ahead, in any-using any kind of business judgment would not pay $10 million for a railroad property, and I felt that his partners would come to that same conclusion.

It was hard for me to believe that somebody would pay $10 million just for a hobby, and I felt, too, that--this September--the 15th was the date?

Q. 18th.

A. (Continuing)--18th date, we were pretty well along the line with Mr. Dumaine, and we had some discussions with him on this sale of stock or sale of assets, that we were morally committed to him, and I didn't want to do anything to disrupt that deal, because I felt he was a substantive buyer, and he had the $5 million, and he really wanted the railroad, and I felt that that sale could be accomplished, and I doubted whether this one could, and it was a business judgment, right or wrong, that I did not give Mr. Coward serious consideration and stuck with Mr. Dumaine, which is a business judgment.

Q. Did you relate Mr. Coward's offer to any of the management of Bangor Punta or any of the directors?

A. I don't know that I did or not. I quite possibly or probably told Mr. Robertson about it.

Whether I related it to New York, I don't remember, because I didn't feel it of substance, solid substance enough to relay the price is 40 times earnings, what we earned last year.

People don't buy railroads at five times their earnings.

Q. You mean that if price was a little lower than $10 million but more than five, you may have been more seriously considering him?

A. No, because Mr. Dumaine had a real reason for buying a railroad. He's a--has a solid interest in the welfare of transportation in New England, particularly northern New England, and Mr. Dumaine hoped that his purchase of the Bangor & Aroostook Railroad might lead to merger in some way with the Maine Central, which he felt would be helpful from the transportation point of view, and thereafter he had vague hopes of including the Boston Maine and possibly the Delaware and Hudson, and making a northern New England system out of it, and that strategy or plan of his had some substance to it; more so than somebody buying the Bangor & Aroostook Railroad as a hobby or on the unsubstantive reasons that Mr. Coward gave me.

Q. Well, wasn't Mr. Salgo and other management people, directors, weren't they interested in getting as much as they could for the railroad?

A. Oh, yes. Yes.

Q. Would--did you feel that Mr. Coward's offer, in which he allowed you to hold stock of the railroad as collateral, and also put members on the board, provided enough protection for Bangor Punta?

A. Yes. You have to take that letter in the context of our being pretty well down the road with Dumaine, having agreed with him on a price, and I think an agreement in the Bangor & Aroostook management that we were committed to Dumaine to the extent that we--if we could work out the proper tax arrangements, and the proper vehicle for giving him the railroad, that we were morally, at least about this time--this i[illegible] September 15th or 16th--that we should pursue that course, and not clutter up the negotiations with Dumaine.

I felt there was a good possibility of our losing Dumaine, because he was getting restless while we were doing all our tax work.

Q. At what point did you feel Bangor Punta was morally committed to Mr. Dumaine?

A. I don't know, but I did at this point, which is mid-September.

Q. What did you mean in the letter by, and I quote from the second paragraph--from the second paragraph of the letter:

> "At our meeting in Boston the 27th of August you indicated to me that you were in charge of any sale of the railroad that might take place, and that in fact you were considering an offer at that time and could not consider my offer until such time as the other offer expired."

Were you morally committed as of the 27th of August?

A. I felt I was, yes.

Q. Is that what you--strike that.

In your words, what did you tell Mr. Coward in the meeting of August--you say it's August 28, although he indicates it's August 27th.

A. My diary shows the 28th.

A. Rather than use his words in the letter, I'd like to know what you told him, what you recall you told him?

A. I told Mr. Coward that we were negotiating with someone else, and the negotiations were reasonably well along, and I didn't feel at this point that I wanted to enter into negotiations with him as long as the other negotiations were pending, and I said that partly because I did not believe that his interest would prove to be a substantive one.

* * *

Mr. Belkin: I will take your suggestion up and ask Mr. Hutchins what he means by moral commitment.

The witness: Let's see what I do mean.

I had an understanding with Dumaine, as the record shows, and I had the feeling, I had the conviction that this arrangement with Mr. Dumaine was the best course of action for Bangor Punta to pursue, and I felt it my duty, as a director, to impress that upon the management and the board of directors.

In that sense I had a moral obligation to the project.

After listening to Mr. Coward, I was more convinced that the Dumaine sale was the best course for us to pursue, and I didn't want to endanger that.

BY MR. BELKIN:

Q. Why did you feel after listening to Mr. Coward that the best course would be to sell it to Mr. Dumaine?

Did you have any specific feelings or reasons?

A. It's hard to define a state of mind.

Having been convinced, I guess over a time, that this was the best course for us to pursue, I probably was a little more suspicious or critical or unbelieving of Mr. Coward's offer than I might otherwise have been.

What he told me hadn't--did not convince me that the Dumaine course wasn't the best one.

Contrarywise, if I had been convinced that Mr. Coward's offer was substantive in any kind of diligence, I would have had to pursue it.

I just didn't think so, and that was just a matter of business judgment of mine, right or wrong.

Q. Do you know whether anyone ever found out who he might have been representing?

Mr. Ryan: Who Mr. Coward represents?

Mr. Belkin: Yes, Mr. Coward, excuse me.

Q. Did anyone indicate that to you?

A. No, except that I understood, and I can't remember where, Mr. Coward represented money in the Coward family, which resulted from the sale of Coward Shoe Company to one of the holding companies,

and that there was money in the family, and that he had other associates in this pool with him. That's about all I ever found out.

* * *

Q. Why did you have Mr. Coward come to Boston to tell him that you basically couldn't consider his offer?

A. Again, a matter of diligence, Mr. Robertson suggested that I see Mr. Coward and listen to him.

Mr. Coward was in Nantucket, and I was in Bangor, so, Boston seemed to be a convenient meeting place, and I think it was then my duty to at least see him and see what he had to say.

I repeat, what he had to say didn't convince me of a substantive interest.

I repeat, I could see no reason why he would want to buy the railroad really.

Now, why sophisticated associates, which presumably would go along with the thing, I don't know, and I could see why Mr. Dumaine wanted to buy it.

When anybody sells anthing of magnitude or buys something of magnitude, one always tries to find out the reason behind it, strategy behind it.

Mr. Coward's letter dated September 18, 1969, to Mr. Hutchins read as follows:

September 18, 1969

Mr. Curtis M. Hutchins
Bangor Punta Corporation
405 Park Avenue
New York, New York 10022

Dear Mr. Hutchins:

I thought it would behoove me to write to you at this time to assure you of my group's continued interest in acquiring all, or substantially all of the stock of the Bangor and Aroostook Railroad and to review our offer to Bangor Punta Corporation.

At our meeting in Boston the 27th of August, you indicated to me that you were in charge of any sale of the railroad that might take place and that, in fact, you were considering an offer at that time and could not consider my offer until such time as the other offer expired. My recollection is that you would know one way or the other by the end of September.

In brief our offer still stands. We would pay $4,000,000.00 at the closing and $1,000,000.00 per year, each year for six years, making the total price $10,000,000.00. Bangor Punta would hold the stock as collateral on the loan and collect interest at the prime rate. We would also expect that Bangor Punta would have representation from time to time on the Board of Directors in proportion to the amount of the outstanding loan to the total purchase price. All the above would naturally be subject to a discreet review of the assets and liabilities of the company.

I don't want to wish our adversary any ill will, but, on the other hand, I hope our group can be successful.

Respectfully yours,

John M. Coward
President

cc: Mr. Nicholas Salgo
Mr. W. Gordon Robertson

20. The minutes of the September 9, 1969 meeting of Bangor Punta's board of directors contain the following concerning the Railroad:

DISPOSITION OF BANGOR AND AROOSTOOK RAILROAD

Discussions regarding the sale of the Bangor and Aroostook Railroad, which has been under consideration by the Board of Directors for a considerable period of time, were resumed. Various proposals concerning the sale of the Railroad were discussed, including the sale of assets, a combination of a partial sale of the assets and a leasing arrangement of the remaining assets, and the sale of the stock of the Railroad.

In the course of discussing whether stock or assets could be sold, the tax aspects of such sales were fully considered as well as the sizeable diminution of assets on the books of the Corporation as the result of one type of sale as contrasted with the other. Also considered were indications that the prospects for increased earnings by the Railroad for Fiscal Year 1970 and in future years are very poor. Additionally, Mr. W. Jerome Strout, President of the Railroad, had previously informed the Board that substantial expenditures of money would be necessary for capital items during the next several years.

Mr. Hutchins stated that this would constitute a heavy burden on the parent company at times when required loan capital will not be available to the Railroad. Further, the Board had also been advised that competition by other modes of transportation indicate that the possibility of expanding the business of the Railroad is negligible (Reference: BPC-5-21-69-8.)

After due consideration, the Board of Directors decided that it should authorize Mr. Curtis M. Hutchins, a member of the Board who has been negotiating with Mr. F. C. Dumaine, Jr., President of Amoskeag Company, to consummate the prompt sale of the Bangor and Aroostook Railroad for a consideration of Five Million Dollars ($5,000,000) or more in cash and such other additional consideration and benefits to the Corporation as are obtainable under terms and conditions which, in Mr. Hutchins' judgment, would be in the best interests of the Corporation.

Upon motion duly made, seconded and carried, it was

RESOLVED, that Mr. Curtis M. Hutchins, a member of the Board of Directors of this Corporation, be, and he hereby is, authorized to consummate the sale of either the assets or stock of the Bangor and Aroostook Railroad to Amoskeag Company, or to such other buyer, for a consideration of Five Million Dollars ($5,000,000) or more in cash and such other additional consideration and benefits for the Corporation as are obtainable under terms and conditions, as will, in his judgment, be in the best interests of this Corporation; and

RESOLVED, that Mr. Curtis M. Hutchins and the officers of this Corporation be, and they hereby are, authorized to execute contracts and other documents, and take all other action necessary to consummate the sale of the Bangor and Aroostook Railroad in accordance with the terms and conditions so negotiated.

21. The minutes of the September 22, 1969 meeting of the board of directors of Bangor Punta Operations, Inc., a wholly-owned subsidiary of Bangor Punta, contain the following concerning the Railroad:

SALE OF STOCK IN BANGOR
AND AROOSTOOK RAILROAD COMPANY

The Chairman stated that it had been determined that it would be in the best interests of the Corporation to sell the shares of

the Bangor and Aroostook Railroad Company owned by it.

After discussion, and upon motion duly made, seconded and carried, it was:

> RESOLVED, that the proposed sale by the Corporation of 177,466 shares of the issued and outstanding capital stock of Bangor and Aroostook Railroad Company, a Maine corporation, for $5 million in cash will be in the best interests of the Corporation and its sole stockholder and Amoskeag Company.
>
> FURTHER RESOLVED, that the proper officers of the Corporation be, and each hereby is, authorized to execute an agreement of sale subject to the terms and conditions as such officer in his sole discretion with the advice of counsel may determine and any amendments, modifications and supplements thereto.
>
> FURTHER RESOLVED, that all actions and doings of the officers, employees and agents of the Corporation or any of them in connection with the proposed sale by the Corporation of said capital stock of Bangor and Aroostook Railroad Company to Amoskeag Company be, and they hereby are approved, ratified and confirmed.

22. On October 2, 1969, Bangor Punta Operations, Inc. ("Operations"), the subsidiary of Bangor Punta Corporation which held the stock of the railroad, entered into an agreement with Amoskeag Company which provided, among other things, that:

> "Operations will on the Closing Date (hereinafter defined) [October 2, 1969] sell to you or your nominee 177,466 shares (the "Stock") of the capital stock of Bangor and Aroostook Railroad Company, a Maine corporation. The total purchase price to be paid by Amoskeag to Operations is $5,000,000 payable by certified or cashier's check."

By supplemental agreement entered into October 2, 1969, it was

> ". . . further agreed that if prior to October 2, 1972, BAR [Bangor & Aroostook] shall transfer, all of its assets, except in a transaction in which neither gain nor loss is

recognized for federal income taxes, Amoskeag shall pay to Operations one million five hundred thousand dollars ($1,500,000) within 30 days after the said transfer, sale, or other disposition."

By a further supplemental agreement entered into October 2, 1969, it was

". . . further agreed that Amoskeag will cause BAR to pay to Operations the net profits received by BAR or its assigns from the sale of all or any part of Sears Island prior to October 2, 1974, less any costs or charges related to such sale. Operations shall have the right to veto any sale for less than one million dollars ($1,000,000)."

23. On October 3, 1969, Bangor Punta issued the following press release:

FOR IMMEDIATE RELEASE

BANGOR AND AROOSTOOK RAILROAD ACQUISITION

BOSTON, MASS. -- October 3, 1969 -- Bangor Punta has sold its stock in the Bangor and Aroostook Railroad to The Amoskeag Company for $5 million in cash.

Frederic C. Dumaine, Jr., president of Amoskeag, said that no operating changes or changes in management of the road are contemplated and that W. Jerome Strout will remain president and chief executive officer.

The Bangor and Aroostook Railroad stock is carried at approximately $18 million on the books of Bangor Punta Corporation. The sale to Amoskeag will result in a non-recurring book loss of approximately $13 million, with no tax benefit to the company, while part of the $5 million to be received will be subject to capital gains taxes.

David W. Wallace, president of BangorPunta, said continued operation of the railroad does not fit in with the company's growth program.

The 78-year old railroad, which principally serves agricultural and forest industries in northern Maine, has been a subsidiary of Bangor Punta Corporation since the merger of Punta Alegre Sugar Corporation with Bangor & Aroostook Corporation in 1964.

24. A draft press release prepared by the Railroad, was revised by Bangor Punta to read, in part, as follows:

> "Boston, Mass., October 2, 1969--Amoskeag and Bangor Punta have signed an agreement calling for Amoskeag to purchase the Bangor Arostook [sic] Railroad for 4,000,000 in cash and assumption of the Railroad liabilities.
>
> * * *
>
> The Bangor & Arostook [sic] Railroad is carried at approximately $18 mil. on the books of Bangor Punta Corporation. The sale of the Railroad assets will result in a loss for tax purposes in a somewhat lower amount than the $14 mil. book loss of Bangor Punta."

This release was not issued since the stock rather than the assets was sold.

25. Bangor Punta, in its preliminary and final registration statements and prospectuses, made no reference to a decision to sell the railroad. This finding is contested only in the sense that Bangor Punta denies there was a decision to sell the Railroad.

26. (a) Bangor Punta incurred a $13.8-million book loss on the sale of its investment in the Railroad.

(b) At the end of fiscal 1968, Bangor Punta had Retained Earnings of $37.9-million and the book loss incurred due to the sale of the Railroad was equivalent to 36.5 percent of such Retained Earnings. At the end of fiscal 1969, after taking into consideration all the non-recurring extraordinary items including the book loss on the sale of the Railroad, Bangor Punta's Retained Earnings were $20.5-million.

(c) At the end of fiscal 1968, the Shareholders' Equity in Bangor Punta was $113.5-million and the book loss incurred due to

the sale of the Railroad was equivalent to 12 percent of the Shareholders' Equity at the end of fiscal 1968. At the end of fiscal 1969, after taking into consideration all the non-recurring extraordinary items including the book loss incurred on the sale of the Railroad, the Bangor Punta Shareholders' Equity was $137,319,906, which amount included $41 million increase in capital stock and capital surplus arising principally ($38 million) from the excess of fair value over par value of securities issued for companies acquired (9021 shares of $1.25 convertible preference stock, 867,639 shares of common stock and 2,141,972 common stock purchase warrants). Virtually all of the above $38 million arose in the acquisition of the 50.6% interest in Piper Aircraft held at September 30, 1969.

(d) Bangor Punta's consolidated net income for the period commencing with the fiscal year ended September 30, 1964 through the fiscal year ended September 30, 1969, was:

1964	$3,749,000
1965	5,578,000
1966	5,569,000
1967	5,571,000
1968	8,101,000
Six months ended March 31, 1969 (unaudited)	5,032,000
1969	(8,566,964) (loss)

In fiscal 1969, Bangor Punta's consolidated net income, before non-recurring extraordinary items including [illegible] book loss incurred due to the sale of the Railroad, was $5,985,067.

27. On May 26, 1969, the SEC commenced an action against Bangor Punta and Piper in the United States District Court for the District of Columbia, alleging, in substance, that the May 8, 1969 press release violated Section 5(c) of the Securities Act of 1933 and Rule 135 thereunder. Simultaneously with the filing of this action, Bangor Punta and Piper in a written stipulation with the SEC consenting to the entry of a permanent injunction stipulated, among other things:

> "3. Defendants Bangor Punta Corporation and Piper Aircraft Corporation, without admitting the allegations in said complaint and alleging that any acts on its part were not done with the intent to violate any provision of law, hereby consent to the entry of a Final Judgment of Permanent Injunction conformable to the demands of the complaint herein.
>
> 4. This stipulation and consent is for the purpose of the pending action, and the pending action only, and does not constitute an admission by the Defendants for any other purpose and may not be used against the Defendants or others in any other proceeding."

The permanent injunction, filed on May 26, 1969, ordered, among other things:

> "that defendant, Bangor Punta Corporation, file within 10 days from the date this order is entered or at such other time as the parties herein may agree to with the approval of this Court, a registration statement with the Commission covering the securities described in the May 8, 1969 statement quoted in paragraph 10 of the complaint filed in this matter, a copy of which is annexed hereto. Should said defendant elect not to file a registration statement within the time so specified by the Court, defendant, Bangor Punta Corporation, is ORDERED to issue a statement stating that the offering described in the May 8th statement has been discontinued or will not be made."

* * *

"that said defendants cannot announce or implement any exchange offer unless and until such announcement of said exchange offer and the exchange offer comply with the registration provisions of the Federal securities laws."

The following pages 811A to 1101A are the agreed findings of fact stipulated to by the parties in Bangor Punta v. Chris-Craft, docket No. 72-1120. These findings were submitted to the trial court as Exhibits AG, AN, AO and BG; for the convenience of this Court they are set out here in numerical order.

[Proposed by Bangor Punta and Piper]

352. On October 30, 1968, Chris-Craft filed with the SEC a registration statement, including a preliminary prospectus, for an offering to its stockholders and certain of its executives of transferrable rights to subscribe for up to $26,000,000 principal amount of convertible subordinated debentures, due 1989 ("the 6% convertible debentures"). This registration statement, including a final prospectus, became effective on December 10, 1968. The rights offering expired on December 24, 1968.

The December 10, 1968 prospectus was supplemented on December 30, 1968 as follows:

Chris-Craft Industries, Inc.

Supplement to Prospectus dated December 10, 1968

Of the $21,223,200 principal amount of 6% Convertible Subordinated Debentures Due 1989 offered for subscription, $20,390,000 aggregate principal amount was subscribed for by holders of Subscription Warrants, and the remaining $833,200 principal amount is to be purchased by the Underwriters as set forth in the Prospectus.

The Representatives of the Underwriters have advised the Company that, during the subscription period, the Underwriters (and the Representatives on their behalf) did not purchase or exercise any Subscription Warrants and did not purchase any Debentures. Such Representatives have further advised the Company that $833,200 principal amount of the Debentures is being offered to the public at a price or prices determined as set forth on the cover page of the Prospectus.

December 30, 1968.

No other supplement was made.

On or before December 31, 1968, Chris-Craft received payment for the debentures from its executives, the holders of the transferrable rights, and the underwriters.

This December 10 prospectus, as supplemented, stated at p. 2:

> Until January 19, 1969, all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Chris-Craft made no application to the SEC to shorten the period of time during which prospectuses may be required to be delivered.

[Proposed by Bangor Punta and Piper]

354. Chris-Craft made its first purchase of Piper stock on December 30, 1968. Proceeds of the sale of the 6% convertible debentures were among the funds ultimately used by Chris-Craft to acquire Piper stock.

[Proposed by Bangor Punta and Piper]

355. Fund available and cash flow statements, annexed hereto, prepared on January 24, 1969 by Winslow Maxwell (the Chris-Craft Controller) with regard to the cash tender offer show that as of December 29, 1968, Chris-Craft had cash available of $4,300,000 from sources other than the debenture proceeds, and $25,400,000 from the debenture proceeds. By January 19, 1969, Chris-Craft had spent $5,295,821.03 of the cash available for market purchases of Piper stock and $1,400,000 for the purchase of stock of Hemisphere Hotels Corp. (formerly C.G. Fisher Corp.) By or before January 24, Chris-Craft had spent or allocated for purposes other than the purchase of Piper stock an additional $2,600,000 of the cash available as of December 30, including an expenditure of $110,000 for the purchase of Argonaut Taiwan Corp., a transfer of $1,500,000 to the boat division, and an allocation of $740,000 to dividends and long term debt.

816A

24

FUNDS AVAILABLE
(in $000)

We have on hand in cash and C.D.'s		$14,000
Receivables re: Sale of WBS		1,700
(Payable) re: Purchases of Piper - thru 1/23	(400)	
16,200 plus 2,300 on 1/24	(1,200)	(1,600)
Committment from PNB		10,000
Total Funds Available		$24,100
Payable re: Tender -- 300,000 @ $66		19,800
Balance Available		$ 4,300

Potential Holdings

Purchased through 1/23	203,700
Purchased as of 1/24	16,200
	2,300
	222,200
Potential from Tender	300,000
	522,200
Potential from $3 million of the balance available (@ $65)	46,000
Total Potential from Funds Available	$68,200

ONLY COPY AVAILABLE

Exhibit 68 for id
3/12/70 JHW

25

SUMMARY OF CASH FLOW
(in $000)

	Cash	C.D.'s
Balance, December 29		
Proceeds of Debentures	$2,400	$23,000
All Other	800	3,500
	$3,200	$26,500
Less:		
Purchases of Stock -		
Piper	$11,700	
WBS	250	
Fisher	1,400	
Taiwan	110	
Transfer to Boat Division	1,500	
Dividends, Long Term Debt, etc.(net)	740	
	$15,700	
Balance before liquidation of C.D.'s	(12,500)	
Liquidation of C.D.'s	14,500	(14,500)
Balance, January 24	$2,000	$12,000

Note: Payable re: Piper Stock $375
Receivable re: 32,500 WBS $1,720

W.M.
1/24/69

Exhibit 69 for id

December 16, 1970 818 A

[Proposed by Bangor Punta and Piper]

357. Chris-Craft's final prospectus dated December 10, 1968, as supplemented, stated at pp. 4-5:

PURPOSE OF ISSUE

The maximum net proceeds from the sale of the Debentures offered hereby, estimated at $25,550,000, will be added to the general funds of the Company. The Company's working capital, including cash and equivalents, is in excess of the Company's current operating requirements.

Such funds will be available for use in connection with further acquisitions and diversification of the Company's business. The Company has been investigating and expects to continue to investigate possible acquisitions of businesses furnishing products or services in the area of recreation and leisure time activities or of other businesses which, in the judgment of management, both can be acquired on a favorable basis and are profitable, or can be profitably developed by the Company. There are, at the present time, no understandings or agreements (except as described in "Business and Property—Recent Developments") with respect to any proposed acquisitions and the Company can give no assurances that any such acquisitions will be effected. Acquisitions may result from mergers and purchases or exchanges of securities or assets and may also result from negotiated or market purchases or tenders of securities of other companies, all or part of which securities may, under certain circumstances, be sold by the Company. The Company from time to time has had preliminary negotiations with certain companies in the motion picture industry and, in connection therewith, has acquired, and in some cases continues to own, shares of the capital stock of such companies. However, no final arrangements have resulted from any of such preliminary negotiations, and no assurances can be given that any negotiations will be resumed, continued or initiated or that any final arrangements will result.

Additionally, under conditions not now determinable, part of the proceeds may be applied for expansion of the Company's facilities and operations, either directly or through subsidiaries, and in making adjustments in the capital structure of the Company, which may entail the repurchase or redemption of certain of the Company's securities.

Chris-Craft's preliminary prospectus dated October 30, 1968 contained substantially the same statement at pp.4-5.

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[Proposed by Bangor Punta and Piper]

359. The prospectuses made no statement with respect to Piper.

January 11, 1971

[Proposed by Bangor Punta and Piper]

361 A. As of October 22, 1968, Chris-Craft had outstanding $19,000,000 of 5-3/4% Notes ("Notes"), held by:

American National Insurance Co.

Connecticut General Life Insurance Co.

The Ford Foundation

Investors Mutual, Inc.

Investors Selective Fund, Inc.

Massachusetts Mutual Life Insurance Co.

Investors Mutual, Inc. and Investors Selective Fund, Inc. are both managed by Investors Diversified Services ("IDS").

[Proposed by Bangor Punta and Piper]

362. By two letters dated October 22, 1968, Chris-Craft requested the holders of the Notes to agree to certain amendments.

[Proposed by Bangor Punta and Piper]

363. By letters dated November 7, 1968 the holders of the Notes agreed to certain amendments and consented to other modifications of the terms of the Notes.

[Proposed by Bangor Punta and Piper]

365. William Beardsley (a resident of Minnesota) from May 1968 through at least the spring of 1969 had the responsibility of supervising IDS's Selective and Mutual fund's investments in Chris-Craft's Notes. His written recommendation that the IDS Executive Committee approve the amendments and consents requested by Chris-Craft in the fall of 1968 states:

The first three modifications will permit the Company more flexibility in arranging financing for managements' acquisition program. The fourth modification is a concession to the lenders which will reduce the average life of the issue from 8.25 years to 5.75 years which is desirable considering the low rate compared to present investment opportunities.

He testified at deposition, p.39, that he had negotiated the amendments and consents, on behalf of IDS, with "probably Mr. [Leonard] Gordon or a representative of Shields [& Company Incorporated] . . .

> "I don't recall the specifics, except that the company [Chris-Craft] had in mind expanding through acquisition and these three covenants were cumbersome to them in that regard."

[Proposed by Bangor Punta and Piper]

367. Beginning in the early 1960's the Philadelphia National Bank ("PNB") provided banking services to Baldwin-Montrose Chemical Co. and its predecessors. Herbert Siegel was the chief executive officer of these corporations. Mr. Siegel testified at deposition, at p. 270, that he considers G. M. Daurens, Jr., President and Chief Executive Officer of PNB, an "old friend." Robert H. Potts, the Executive Vice President of the PNB (a Pennsylvania resident), testified at deposition, at p. 4, that he first met Mr. Siegel in 1958 or 1959, in his capacity as an officer of the PNB. Mr. Siegel testified at deposition, at p. 266, "I have a long, long history with that bank and we deal on a phone call."

[Proposed by Bangor Punta and Piper]

368. In the fall of 1968, Chris-Craft asked PNB for a revolving line of credit for general corporate purposes of up to $15,000,000. PNB made a loan of $15,000,000 to Chris-Craft on February 3, 1969. The entire proceeds thereof were among the funds used to pay for Piper shares received by Chris-Craft on its cash tender offer, which closed on February 3, 1969.

[Proposed by Bangor Punta and Piper]

369. Mr. Potts testified at deposition, at pp. 32-33 and 35-36,

Q. Mr. Potts, when was the first discussion that you had with Mr. Siegel or anyone else at Chris-Craft concerning the loan which was in fact made approximately February 3, 1969?

A. Subject to being corrected by memorandums, I would say November or December of 1968.

Q. I see. Do you recall how you became aware that Chris-Craft was interested in making a loan?

A. Do I recall how I became aware?

Q. Yes.

A. Word of mouth.

Q. Who would have told you about this? Mr. Siegel?

A. Yes.

Q. Do you recall what Mr. Siegel said to you about this loan?

A. Not specifically.

Q. Do you recall that he mentioned the amount, $15,000,000?

A. I don't mean to be flippant. He would have had to in order for us to arrive at that figure.

Q. Presumably at sometime or another the $15,000,000 was discussed?

A. Yes.

Q. Is it your recollection that $15,000,000 was discussed at the very first conversation about this loan?

A. No, it is not my recollection. I couldn't say one way or another.

It seems to me that that may not have been the amount initially discussed.

Q. Did Mr. Siegel tell you what he needed the money for?

A. Of course.

Q. What did he need it for?

A. He needed it for the purchase of Piper stock.

Q. I see.

A. The word "need" there has a double entendre as far as I am concerned. He requested it for that.

Q. He requested it. I see.

* * *

Q. Mr. Potts, did there come a time when you became aware of Chris-Craft's interest in Piper Aircraft Corporation?

A. Yes, sir.

Q. Approximately when would that be; do you recall?

A. I believe I may have indicated earlier either November or December of 1968.

Q. How did you become aware of Chris-Craft's interest?

A. Herbert Siegel would have told me or Fred Miller.

Q. I see. Do you recall what Mr. Siegel told you about Piper?

A. Oh, I think he would have told me that he thought that this would be a desirable acquisition for Chris-Craft in its plans to move into the leisure time field.

January 19, 1971

[Proposed by Bangor Punta and Piper]

371. At all relevant times the maximum loan authority of the PNB, independent of other participants, was $12,000,000 on one loan. Chase Manhattan Bank ("Chase") and Marine Midland Grace Trust Co. of New York ("Marine Midland") participated, to the extent of $5,000,000 each, in the $15,000,000 loan made to Chris-Craft. Mr. Potts, when asked at deposition approximately when PNB had arranged for such participation, testified, at p.39,

[a fellow employee of PNB]

Q. Do you know approximately when Mr. Miller first contacted Chris-

A. It would have been either December or January. December of '70 or January of '71.

Mr. Potts further testified at deposition, at pp. 40-41,

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Q. Did Mr. Miller tell the Chase what the purpose of this loan was to be?

A. Yes, sir.

Q. What would he have said that the purpose was to be?

A. He would have said that the purpose is to acquire stock of Piper.

Q. I see. Would he have had a similar conversation with the Marine Midland?

A. Yes, he would have.

Q. And they would have met at approximately the same time?

A. Yes, sir, they would.

Q. In December or January? In December of '68 or January of '69?

A. Yes, sir.

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January 14, 1971

[Proposed by Bangor Punta and Piper]

372. Mr. Potts testified at deposition, at pp. 45-50,

Q. Were there any discussions within your organization, Mr. Potts, concerning this loan about having Chris-Craft maintain any compensating balances?

A. Specifically, no, because Chris-Craft, since our relationship with them, has kept what is in our opinion fair compensating balances.

BY MR. PARRETT:

Q What do you mean by "fair", Mr. Potts, approximately?

A This would relate to usage under the arrangement. There are different formulas by which a bank would gauge "fair" today.

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Q Yes.

A In some instances this could be [illegible] balances which would be 20 percent of outstandings. It might be 10 percent of the line, and then 20 percent plus 5 percent on the amount outstanding.

It really is all over the lot, but I would say in this instance anything which was within the area of being 15 percent of a commitment or 20 percent of outstandings is fair.

Q I see.

A If not desirable.

Q I see.

What would you consider desirable, just by way of a gauge?

A I would consider desirable a situation where the deposits today exceed the loans.

Q I can understand [illegible]

A I am not trying to be evasive, either. I couldn't be more serious.

Q No, no. I know.

Do you know if Chris-Craft maintained deposits at Chase during the time that this loan was instituted?

A Yes, they did.

Q Do you know if they maintained deposits at Morgan Guaranty during this period?

A I do not believe they did.

Q Did either of those banks discuss requiring Chris-Craft to maintain a compensating balance there?

A I don't know about Chase. This was arranged for by Marine and us.

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Q What do you mean by that, Mr. Potts?

A I mean that we increased the amounts that we were carrying with Marine.

Q I see.

And when you talk about 10 percent or 20 percent of the line in connection with this loan, do you mean 10 percent of your participation or 10 percent of total loans?

A Our participation.

Q I see.

A But let me qualify this. If you look at the entire picture for the $15 million cut branches you will be thinking in terms of 20 percent as a guide.

Q I see.

But you had no formal arrangements with Chris-Craft about this?

A No, sir.

Q You felt no need for such formal arrangement at that time?

A Correct.

Q Did you anticipate that Chris-Craft would be able to maintain this level of deposits?

A Yes.

Q Even though you knew that they were going to take most of the cash, the many hedge each month that they had, and invest it in securities of Ripley?

A Yes.

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Q During this period November, December, January that we are discussing, did Chris-Craft have any securities on deposit in the bank?

A I believe we have, that we are holding some debentures for them.

Q The time period I am talking about is the time that you were considering the loan.

A That's right. Did I know at that time?

Q Yes.

A To be more specific, what kind of securities?

Q Common stocks, government securities.

A Government securities, no. At that time their excess funds would have been in certificates of deposit and those securities that you are so classifying would have been carried by us.

Q You would have carried their certificates of deposit?

A Yes.

Q Do you know if, during January of 1968, Chris-Craft had any securities on deposit with Bankers

A On deposit or ownership?

Q In custody.

A Shamise -- I believe so.

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[Proposed by Bangor Punta and Piper]

373. Chris-Craft's December 10, 1968 prospectus as supplemented, states with respect to the 5-3/4% Notes at pp. 5, 17-18, 24, 32, 41 and 45:

CAPITALIZATION

The capitalization of the Company as of October 22, 1968, and as adjusted to give effect to the issuance of the Debentures, is as follows:

	Authorized	Outstanding	To be Outstanding
Long-Term Debt—includes amounts due within one year(1):			
5¾% Promissory Notes due 1968-1979	$19,000,000	$19,000,000	$19,000,000

* * *

(1) See Note (5) to "Notes to Consolidated Financial Statements" of the Company for further details with respect to the existing long-term debt of the Company and "Description of Debentures" for further details with respect to the Debentures offered hereby.

* * *

The Note Purchase Agreements, dated December 20, 1965, as amended ("Note Agreements"), pursuant to which the Company's 5¾% Promissory Notes ("Notes") were issued, provide, among other things, that the Company must offer to apply the proceeds of any sale of all or a substantial part of the consolidated assets of the Company and its consolidated subsidiaries (other than sales of securities of other companies) to the prepayment of the Notes. The Note Agreements, as amended, also contain restrictions on the issue of senior and subordinated funded indebtedness by the Company. After giving effect to the issue of the Debentures and based upon the Company's financial statements as of August 31, 1968, the Company will not be able to issue any additional such indebtedness without the consent of the holders of the Notes. See Note (5) to "Notes to Consolidated Financial Statements" of the Company for further details with respect to the aforementioned Note Agreements and Notes. This summary of certain of the provisions of the Note Agreements and Notes is qualified by the complete provisions which are set forth in the Note Agreements and Notes, copies of which are filed as exhibits to the Registration Statement of which this Prospectus is a part.

* * *

Subordination. The Debentures will be subordinated as to principal (and premium, if any) and interest to all Senior Indebtedness. The term Senior Indebtedness is defined to mean the principal of and premium, if any, and interest on, (a) Indebtedness for money borrowed in respect of which the Company is in any manner liable, whether or not outstanding on the date of execution of the Indenture or thereafter created, incurred or assumed, including the Company's 5¾% Promissory Notes, due 1979 (as amended), and (b) deferrals, renewals, extensions and refundings of any such Indebtedness, but shall not include (x) the Indebtedness evidenced by the Company's 7% Subordinated Debentures, (y) the Debentures or (z) any other Indebtedness of the Company if by the terms of the instrument creating or evidencing such Indebtedness it is provided that such Indebtedness is not superior in right of payment to the Debentures. The Indenture will provide that the Debentures are not superior in right of payment to the Indebtedness evidenced by the Company's 7% Subordinated Debentures. (Section 1.01 and Article Three)

Upon any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors in connection with any dissolution, winding up, total or partial liquidation or reorganization of the Company, Senior Indebtedness shall be first entitled to receive payment in full in cash before the holders of the Debentures shall be entitled to receive payment upon the principal of (and premium, if any) or interest on the Debentures. The Company shall not make any payment on account of principal, premium, if any, sinking fund or interest on the Debentures, unless full payment of amounts then due for principal, premium, if any, sinking funds and interest on all Senior Indebtedness shall have been made or duly provided for in cash; and the Company shall not make any payment on account of principal of the Debentures if at the time of such payment or immediately after giving effect thereto, there shall have occurred and be unremedied any default, condition, act or event which, of itself or with notice or lapse of time, or both, permits under any Senior Indebtedness the holder or holders or any trustee thereof to declare such Senior Indebtedness due and payable prior to the stated maturity thereof. The foregoing provisions will not affect the relative rights of the holders of the Debentures and creditors of the Company other than holders of Senior Indebtedness. By reason of such subordination, in the event of insolvency, creditors of the Company who are not holders of Senior Indebtedness or of the Debentures may recover less, ratably, than holders of Senior Indebtedness and may recover more, ratably, than the holders of the Debentures. (Article Three and Section 6.04)

* * *

Dividend and Other Restrictions

Certain debt instruments of the Company contain restrictions upon dividend payments and the purchase and redemption of capital stock in addition to those contained in the Indenture under which the Debentures are issued. Under the most restrictive of these instruments, the Note Purchase Agreements dated December 20, 1965 governing the Company's 5¾% Promissory Notes, $2,700,000 of the Company's consolidated net earnings were available for dividend payments and purchase and redemption of capital stock as of August 31, 1968.

* * *

CHRIS-CRAFT INDUSTRIES, INC.
AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET—AUGUST 31, 1968 (Note 1)

* * *

LONG-TERM DEBT (Notes 5 and 6):	
5¾% promissory notes	$ 17,900,000

* * *

* * *

(5) LONG-TERM DEBT AND RESTRICTIONS:

The provisions of the 5¼% Promissory Note Purchase Agreements are more restrictive as to the payment of dividends than the Indenture covering the 7% subordinated debentures. As of August 31, 1968, approximately $2,700,000 of consolidated net income (as defined) is free of such restriction and is available for payment of cash dividends. The notes, which are unsecured, require payments of $1,100,000 annually, from December 15, 1968 through December 15, 1984. The Company is presently negotiating changes in the Agreements which would increase annual payments to $1,500,000 with maturity at December 15, 1979.

The 7% subordinated debentures due September 30, 1972 require annual sinking fund payments on May 15 based on consolidated net income (as defined) for the preceding year. The principal amount outstanding at August 31, 1968 of $3,780,000 is stated net of $551,900 principal amount of debentures repurchased and held for future sinking fund payments.

The aggregate minimum maturities and sinking fund requirements on long-term debt for the five years subsequent to August 31, 1968 are $1,386,000 in 1969, $1,206,000 in 1970, $1,206,000 in 1971, $1,186,000 in 1972 and $1,115,000 in 1973.

No other statements were made with respect to the Notes.

January 11, 1971

[Proposed by Bangor Punta and Piper]

374. Chris-Craft's December 10, 1968 prospectus, as supplemented, makes no reference to Chris-Craft's discussions with PNB in November or December, 1968, about the possibility of borrowing funds, or to the fact that Potts had given some indication of favorable consideration.

December 17, 1970

[Proposed by Bangor Punta and Piper]

376. Mitchell Hutchins & Co., Inc., (Mitchell Hutchins) is a member of the New York Stock Exchange and a registered broker-dealer with offices in New York and Chicago. Mitchell Hutchins has a reputation of dealing primarily with institutional investors. Some of the institutions with which it dealt were Supervised Investors Services, Inc. (the investment adviser of Technology Fund, Inc.); Keystone Custodian Services (the investment adviser of the Keystone funds); Madison Fund, Inc.; J. M. Hartwell & Co., Inc., an investment adviser and manager of a number of institutional accounts, including several offshore hedge funds; and Investors Diversified Services, the manager of several large mutual funds, two of which held a total of $5,000,000 principal amount of Chris-Craft's Notes referred to in Finding 361A through 366.

[Proposed by Bangor Punta and Piper]

377. Roger Spencer (an Illinois resident), a financial analyst, is a vice-president of Mitchell Hutchins. He testified at deposition, at pp. 5-8, 32-33 and 51,

Q When did you first take a more than passing interest -- when did you first start to concentrate on Chris-Craft?

A It would be either December of '67 or early January of '68.

. . .

* * *

Q Did you ever meet any of the officers of Chris-Craft?

A Yes, sir.

Q Did you ever meet Mr. Herbert Siegel?

A Yes, sir.

Q Do you recall when you first met Mr. Siegel?

A It was either in December of '67 or early January, 1968.

Q What was the occasion of the meeting?

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A I was in New York on company business and I set up an appointment to go in and see him.

Q What was the purpose of setting up an appointment?

A I just wished to talk to the management about the company.

Q In other words, you were making --

A An analytic --

Q Investigation of Chris-Craft?

A Yes, sir.

Q And you then went and saw Mr. Siegel?

A Yes.

Q Could you tell us approximately how many times you either met with Mr. Siegel or you spoke with Mr. Siegel during 1968?

A I wouldn't know what number to use.

Q Well, would it be once a month?

A I probably saw him four or five times during the year and talked to him on the phone on other occasions, but I just don't know the number.

Q Would you have spoken to him on the telephone more often than you spoke to him in person?

A Yes. Yes.

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Q Did you speak to him from time to time concerning the status of the affairs of Chris-Craft?

A Yes, sir.

Q Did you ever meet any of the other officers of Chris-Craft?

A Yes, sir.

Q Could you tell us who you met?

A Mr. Gordon, Mr. Rochlis and at shareholders meetings, Mr. Sherril, Mr. Barnett.

Q Mr. Maxwell, the comptroller?

A I have talked to Mr. Maxwell on the phone, but I don't think I have met him in person.

Q Do you recall when you first met Mr. Gordon?

A I believe he was in the original meeting we had with Mr. Siegel.

Q Could you tell us approximately how many times during 1968 you met with Mr. Gordon personally, that is, in person?

A Well, it would be less than I met with Mr. Siegel.

Q What about telephone conversations with Mr. Gordon during 1968?

A There may have been several, but my main contact was with Mr. Siegel.

Q When did you first meet Mr. Rochlis?

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A Again, I believe I met him on that first meeting.

Q Do you recall how many times you met with Mr. Rochlis in person during 1968?

A Less than Mr. Gordon.

Q What about telephone conversations with Mr. Rochlis?

A Less than Mr. Gordon.

Q The other gentlemen you mentioned, you met them at the annual shareholders meeting, is that correct?

A Right.

Q Prior to your initial contact with Chris-Craft in December 1967 or early 1968, whenever it was?

A Yes.

Q Did you ever have any other business relationship or business contacts either with Chris-Craft or Mr. Siegel, Mr. Gordon and Mr. Rochlis?

A No.

Q That is the first time you had any dealings with them in a professional way?

A Right.

***

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Q Aside from those three occasions, would you recall speaking to Mr. Siegel in the month of January?

A Yes.

Q Would it be more than once?

A Yes.

Q Would it have been daily?

A Yes.

* * *

Q Between the end of the cash tender offer, which was, I believe, February 3rd or 4th of 1969, and the date of the filing of the registration statement, which was the end of February of 1969, do you recall how often you had conversations with Mr. Siegel?

A I don't remember how often. I obviously talked to him during that period.

Q Do you recall that the conversations were [illegible]

A My conversations were always connected with, you know, how is the basic business and earning power of the corporation coming along.

As an analyst, that is my interest.

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[Proposed by Bangor Punta and Piper]

378. Mr. Spencer testified at deposition, at pp. 49-50,

BY MR. RYAN:

Q Mr. Spencer, between December 1, 1968 and August 4, 1969, do you recall whether you recommended to any institution the purchase of Chris-Craft shares?

A Yes.

Q Could you tell us what institutions you made such recommendations to, and if you know, whether such institutions in fact bought Chris-Craft securities?

MR. CROWELL: To the best of your recollection.

Q To the best of your recollection.

MR. SCHLOSSER: I just want to note my objection to these questions on the purchases of Chris-Craft.

A This was December of 1968 --

Q Yes, until August 4, 1969.

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A Yes, I had recommended Chris-Craft to a number of institutions.

Q Do you recall the names of some of those that you did and whether they in fact bought Chris-Craft shares as per your recommendation?

A Technology Funds, IDS.

MR. SCHLOSSER: Are you testifying that you know they bought?

THE WITNESS: Yes.

MR. CROWELL: You recommended this to these firms and they bought it?

THE WITNESS: Yes.

A ISI, Newton Fund, Commonwealth Edison Pension Fund. I believe the First Wisconsin Bank and Trust Company bought a small amount.

Those are the ones that I recall. There may have been more.

Chris-Craft stock appears on a list headed "Best Stock Ideas-Roger W. Spencer" dated on or about November 11, 1968 and sent to Hartwell.

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[Proposed by Bangor Punta and Piper]

379. Mr. Siegel testified at deposition, at p. 70,

Q Was there any particular reason for calling Mitchell Hutchins as opposed to some other broker?

A They had taken an active interest in Chris-Craft and had been very good in the way they handled the transactions.

Q You mean they had taken an active interest in Chris-Craft stock?

A Yes, they do have institutional interests, as I recall.

Q You say they had been active with institutional investors in connection with Chris-Craft stock?

A Yes. When I say yes, I assume that is who they were buying stock for. Their primary reputation is as an institutional firm.

Q Did they consult with you from time to time about Chris-Craft stock?

A About Chris-Craft, yes.

Q Who in that firm consulted with you? Was that Mr. Spencer?

A Yes.

Mr. Siegel further testified at deposition, at p. 328,

Q Do you recall, Mr. Siegel, when Chris-Craft began using Mitchell, Hutchins as a broker, a securities broker, to acquire securities for Chris-Craft?

A To the best of my knowledge, the first business we did with them was December 30, 1968.

Q How did it come about that you became associated with Mitchell, Hutchins?

A For about a year prior Roger Spencer had been interested in Chris-Craft and he had interested funds in Chris-Craft. I told him that if we could throw him some business, we would give him some business around that time.

[Proposed by Bangor Punta and Piper]

382. Dean LeBaron (a Massachusetts resident), the Manager of the Keystone Growth (K-2) Fund, which held 30,800 shares of Piper stock in the fall of 1968 and on behalf of which sale transactions for such stock were executed on January 8, 1969 (as set forth in finding 400) testified at deposition, at pp. 7-11,

Q Mr. LeBaron, I direct your attention to late 1968 and early 1969. I ask you if you recall at that time whether the Keystone K II Fund owned any of the common stock in Piper Aircraft Corporation?

A Yes, it did.

Q Do you recall approximately how much it owned?

A Approximately 30 thousand shares.

* * *

Q Do you recall having any conversations at or about this time in 1968, early 1969 with anyone outside of Keystone Funds regarding the advisability of selling any of your Piper shares?

A I recall only one specific conversation.

Q What was that?

A. Several months prior to the time that the stock was sold, one person outside indicated an interest in buying the K II holdings of Piper if we decided to sell. I do not remember any specific reasons given by that individual as to whether or not he would recommend it should be sold or what the major factors were.

Q. Who was the individual to whom you are referring?

A. David Ralff, who was at that time employed by Mitchell Hutchins and Company.

Q. Do you recall approximately when you had this conversation with Mr. Ralff?

A. It would have been several months before the time we actually sold it. I do not remember exactly.

Q. Would it have been in the fall of 1968?

A. If by several months before January takes it to the fall, it's the fall, but in the broadest definition of the term. I've tried to remember more precisely and I can't come toomuch closer than that.

Q. Do you recall how it came about that you had conversation with Mr. Ralff?

A. No, I do not.

Q. Did he call you?

A. We were speaking together, face-to-face and on the phone on a number of matters frequently, so this could be in conjunction with other things. It need not

necessarily have been initiated by him and I do not remember that it was initiated by him.

Q Do you recall anymore specifically what Mr. Ralff said to you?

A No, I do not.

Q Did he say that he was in touch with someone who might be interested in purchasing the shares?

MR. AUSPITZ: Object. He said he doesn't recall.

MR. BARRETT: He didn't state any such thing, Mr. Auspitz.

Q (By Mr. Barrett) I believe you testified earlier the person you had conversation with, whom you subsequently identified as Mr. Ralff, that he said it was somebody else who might be interested in your shares?

WITNESS LeBARON: Could you read back what I said before?

MR. BARRETT: Off the record.

(Colloquy off the record.)

(The reporter read the record as follows:)

("Question: I believe you testified earlier the person you had conversation with, you subsequently identified as Mr. Ralff, that he said it was somebody else who might be interested in your shares?"

A. David Ralff is a broker, and as such it is unlikely that he would be buying the stock for his account or for the account for the broker. I do not specifically remember that he had a buyer, one would assume, given his capacity, that he was in touch with a buyer.

Q (By Mr. Barrett) And you did so assume from the conversation?

A. I do not remember specifically at the time. Now, in reconstructing the scattered bits of conversation, I would.

Q After your conversation with Mr. Ralff, did you report the substance of your conversation to anyone at Keystone?

A. No, not to my knowledge.

[Proposed by Bangor Punta and Piper]

383. On December 1, 1968, accounts of J.M. Hartwell, over which it had sole investment discretion, owned at least 24,400 shares of Piper stock, and call options on an additional 8,000 shares. The majority of such accounts were managed by Carleton Burtt at that time.

January 19, 1971

854 A

[Proposed by Bangor Punta and Piper]

384. John Blewer (a New York resident) was employed by Hartwell as an investment manager from April 1, 1968 through Oct. 1969. His handwritten notes, headed

Chris-Craft	$40	Date	Dec. 6, 1968
		Source	R. Spencer of Mitchell H.
(stock)	(price)	by	JWB

include the following:

> "1. A major interest is the President. Herb Siegel took over on 12/67. His objective is to build a pure leisure-time company.
>
> . . .
>
> "Other lines of interest to Siegel: movies, light aircraft, sporting goods.
>
> . . .
>
> "Initial acquisitions will probably be for cash; later for stock, if p/e ratio rises."

These notes were written by Mr. Blewer during or shortly after a telephone conversation with Roger Spencer. Mr. Blewer took such notes in the ordinary course of his business, to keep a record of such conversations for himself and for the firm, and part of his business was the keeping of such records.

Mr. Blewer testified at deposition, at pp. 19-22,

Q Do you recall Mr. Spencer telling you what his sources of information about Chris-Craft were?

A Well, now you mention it, as I recall, he had talked to the management.

Q Do you recall that he mentioned speaking to Mr. Siegel?

A I don't recall. I don't know what my notes say, but I don't recall it. I know he talked to somebody high in the management.

Q Do you recall his mentioning what the management's plans for Chris-Craft's future were at that time?

A Yes, I remember the thrust of the conversation. The thrust of the conversation involved Christ-Craft buying other companies and so enhancing their earnings, as was the game played at that time.

Q Do you recall the kinds of companies that Chris-Craft intended to acquire?

A No, I don't.

Q Do you recall that Mr. Spencer mentioned that Mr. Siegel was interested in leisure-time companies?

A Yes, I think I do remember that; right. That certainly seems familiar enough to me so I can say I recall it.

Q Do you recall Mr. Spencer mentioning to you that Mr. Siegel had an interest in light aircraft companies?

A I don't specifically remember that.

Q I direct your attention to the bottom part of the memorandum and ask you if that refreshes your recollection that Mr. Spencer mentioned that to you.

A Yes, he has mentioned it, because it is my handwriting and I certainly didn't get it out of the air.

Q Did Mr. Spencer tell you when the management intended to make any of the acquisitions that he thought they might be making?

A Soon, at that time, at the time of the conversation.

Q Approximately when did the conversation take place, Mr. Blewer?

A I don't recall. You will have to tell me.

Q Referring to your memorandum, which was written on December 6, 1968, would it have occurred that day or sometime prior to that?

A No, that day, and I would have made the notes during the phone call.

Oh, sometimes, by the way, I would make notes during a phone call, and because they are illegible, the same day I would rewrite them.

The purpose of these notes was to keep a record for me and the office and to circulate them to other people if you thought they were of particular interest. If you didn't, you would just throw them in the files. But in any case, I wanted them in the file. These notes are so nicely written, it is conceivable I would have rewritten them.

To Mr. Hartwell's credit, he never encouraged us to use secretarial help because we would have spent all the time dictating and rereading notes.

Q So, in other words, by referring to Bangor Punta Exhibit 166 for identification, your conversation with Mr. Spencer would have taken place on December 6, 1968; that is your best recollection?

A That's right.

MR. AUSPITZ: I object.

A I don't have a recollection on the date. I will have to take the date from the memorandum as I see it.

Q Do you recall Mr. Spencer telling you anything about how Chris-Craft proposed to go about making these acquisitions?

A Presumably by -- yes, I do; by bidding for the stock of the companies involved.

[Proposed by Bangor Punta and Piper]

386. John Blewer testified at deposition, pp. 25-29,

Q Subsequent to the preparation of your memorandum, which is Bangor Punta 166 for identification, do you recall having any conversations with any of your associates at J. M. Hartwell, regarding Chris-Craft?

A I do not specifically recall them. I imagine there were some.

Q Would this have been the sort of information that you might have brought to the attention of the other portfolio managers at the Monday meetings to which you have referred?

A I wouldn't have brought it up because I didn't like the situation, so I wouldn't have spent my time or their time on it that way. But since we were talking, as I said, informally during the week, also, the chances are pretty good I mentioned it to one or more managers at one time or another, simply to deplore the idea.

Q Do you recall having any conversations about this information that you had received, with Mr. Burtt?

A No, I don't, except that I was aware, of course, that he had Piper stock in his accounts and he kept it longer than I had, at least for the most part, so as soon as the name Piper came up on anything, I always did talk to Carl[ton]. And of course we had other sources on Piper, other than Spencer, and since Carelton Burtt also covered the other light aircraft companies, such as Cessna and Beech, we always discussed any investment ideas connected with any of that group with him.

Q Do you recall that Mr. Spencer mentioned Piper to you?

A No.

Q Mr. Blewer, you mentioned that you always discussed information whenever the name Piper came up. What did you mean by that statement?

A If I received any information on Piper from any source at all, I would tell Carleton about it.

Q I refer you once again to Bangor Punta 166 for identification, and specifically the reference to Mr. Siegel's interest in the light aircraft industry.

Does that refresh your recollection that you might have brought that information to Mr. Burtt's attention?

A Well, I don't remember whether or not I brought it to Carleton's attention, except as I say, the whole idea about buying Chris-Craft did not appeal to me. The chances are good I did not circulate these notes because I don't see other initials in the upper left-hand corner of this exhibit, and because this was just a small point connected with a larger idea about Chris-Craft, you know. It says "light aircraft," third to last line on page 1. There is a lot of other goo in here. The chances are I didn't think it was material. It would have been perhaps smart of me to bring it to his attention, but I don't think I was that smart.

Q Do you know if this memorandum, or any of the information that was in it, was sent to Mr. Campbell?

A No, I don't.

By the way, let me comment on my own comment for a moment.

Q Certainly.

A There are no initials in the upper left-hand corner there, so I am assuming it was not circulated and probably, almost certainly, the original copy was not circulated.

I probably said, look, this Chris-Craft buying idea is a terrible idea, I will just stick it in the library. But sometimes, to accelerate the flow of information, we would have our secretaries Xerox this kind of note and give it to one or two people, rather than boring the whole office about it, so I must tell you that it is possible that the thing was Xeroxed and given to either Campbell, Burtt; that might happen.

Q Do you recall that this was in fact done in this case?

A No.

Q Mr. Blewer, you were aware of the fact that Mr. Burtt was managing some accounts that held stock of Piper, as you have testified?

A Right.

Q And indeed, you had accounts yourself which had stock of Piper at about this time?

A Or had had, one or the other.

Q You were aware that Chris-Craft had an interest in light aircraft in accordance with this memorandum, and you were also aware that Chris-Craft was about to commence an acquisition program?

A Yes.

Q Does that refresh your recollection that you might possibly have discussed this with Mr. Burtt?

MR. AUSPITZ: Objection.

A It really doesn't. No, it does not.

[Proposed by Bangor Punta and Piper]

387. On December 10, three Hartwell accounts then managed by Carleton Burtt (Kuwait Investment Co., Chapi, S.A., of Antwerp, and First Federal Savings and Loan of Miami Employees Retirement Fund) purchased 9,000 shares of Piper. On December 20, Park Avenue Funding Co., N.V., an offshore hedge fund then managed by Carleton Burtt, which owned 8,000 call options on Piper, purchased an additional 1,500 call options and sold 2,500 of its 8000 shares of Piper stock. Hartwell's record of the exercise of these 1,500 call options on February 13, 1969, contains the notation "acct. of buy in against sale 12/20/68 1500 at 54-1/2."

January 28, 1971

It is stipulated and agreed that words "purchased securities" in this and subsequent findings regarding the purchase of securities by persons other than Chris-Craft, mean that such person instructed a broker to execute a purchase transaction, which took place over a stock exchange on that date. It is assumed that such transaction was settled in the ordinary course of busines unless specified otherwise. A more detailed description is used in describing the transactions by which Chris-Craft acquired Piper stock because of Bangor Punta's and Piper's claim regarding Chris-Craft's ownership.

January 28, 1971

[Proposed by Bangor Punta and Piper]

388. No later than the week of December 16, 1968, Mr. Siegel advised Roger Spencer that Chris-Craft had decided to give some business to Mitchell Hutchins.

January 19, 1971

[Proposed by Bangor Punta and Piper]

389. The annexed memorandum, dated December 23, 1968, was prepared by Mr. Peterson, a Mitchell Hutchins officer. Mr. Siegel wanted to keep knowledge of Chris-Craft's purchases through Mitchell Hutchins limited to as few individuals as possible, since knowledge within Mitchell Hutchins that Chris-Craft was purchasing a security might lead to purchases by others and increase the price that Chris-Craft would have to pay. Mitchell Hutchins decided the best way to achieve this objective was to use a numbered account. Mitchell Hutchins assigned "Account 100" to Chris-Craft and took the other steps referred to in the memorandum in order to keep the account secret.

PERSONAL AND CONFIDENTIAL 868A

December 23, 1968

TO: David H. Kelly
Denis J. Dooley

FROM: Charles T. Peterson

SUBJECT: Confidential Numbered Account Chris-Craft Industries

---

This will confirm my conversation with you last week with regard to the information received from Dave Ralff and Bob Cooney regarding subject account. It is my understanding that Roger Spencer will be primarily responsible for handling this account. The customer will be purchasing securities of a particular firm and wants it known to as few individuals within the firm as possible.

I have recommended to Bob Cooney that we open a numbered account in addition to crediting the commissions to a different R.R. number than the 13 number now used for I.S.D. It is my opinion that this will lend itself to a minimum disclosure of information within the firm.

It is my understanding that Roger, Dave or Bob will notify us as soon as more information is available with regard to opening of the account and the securities to be purchased.

Revised 1/22/71. 869 A

[Proposed by Bangor Punta and Piper]

390. Mr. Siegel asked Mitchell Hutchins to see what shares of Pi[illegible] available for purchase.

January 28, 1971

[Proposed by Bangor Punta and Piper]

391. After the conversation referred to in Finding 390, Edward Burns and Robert Cooney, employees of Mitchell Hutchins, over a period of time, contacted the New York Stock Exchange specialist in Piper and institutional holders of Piper shares, with whom Mitchell Hutchins had done business.

[Proposed by Bangor Punta and Piper]

392. Mr. Burns (a New York resident) testified at deposition, at pp. 6-8, 25, and 31,

Q When did you first speak to Mr. Siegel, if you recall?

A Excuse me. December 30, 1968.

* * *

Q Did you know that Mr. Siegel was interested in purchasing Piper shares?

A Yes, I found that out from one of our salesmen.

Q Who was that?

A Robert Cooney.

Q When did Mr. Cooney advise you that Mr. Siegel was interested in purchasing or acquiring Piper shares?

A I wouldn't --

MR. CROWELL: If you recall.

A I'd say that I understood Chris-Craft was interested around -- this has to be approximate -- December 23, 1968.

Q That is when you were first informed of this?

A Yes.

Q Your recollection is you were first informed that Chris-Craft was interested in acquiring Piper shares and it is your recollection that Mr. Cooney was the gentleman who first advised you of this?

A Yes.

Q Do you recall what Mr. Cooney said to you concerning Chris-Craft, to the best of your recollection?

A Approximately. I happened to be on vacation, but I was conducting trading operations at a distance while I was on vacation, and he happened to call me or I talked with him and he just mentioned the fact that Chris-Craft would be interested in seeing any offerings of Piper.

Q Do you recall anything else Mr. Cooney said to you at that time?

A We just were trying to think of where we might locate such shares.

Q Were you discussing people whom you knew or Mr. Cooney knew, that owned Piper shares at that time?

A Yes.

Q Did Mr. Cooney indicate to you the purpose of Mr. Siegel or Chris-Craft purchasing Piper shares?

A Repeat that.

MR. RYAN: Would you read the question.

(The reporter read the pending question.)

A No.

Q He said nothing to you about it?

A No.

Q Did Mr. Cooney indicate whether any other employee of your firm was aware of Chris-Craft's intention or desire to purchase Piper shares?

A No.

Q Well, after speaking to Mr. Cooney, did you remain then on vacation until December 30th or close to it?

A I came back for Christmas here, and then I was in the office the following day. I can't recall, but it was approximate. It was only a few days that I was on vacation.

* * *

A I asked our floor broker to see if there was any Piper available. This was before December 30th, by a day or so.

The comment at that time was "No."

As brokers do, they walk around the floor. The specialists grab them and say, "Listen, you can ~~grab~~ BUY 5,000 shares at 53."

I simply took that offering and reflected it to Mr. Siegel.

* * *

Q Do you know whether your floor trader asked the specialist to search out blocks of Piper stock for him?

A I believe he did ask him.

Q Do you know what efforts the specialist made?

A No, I do not. The only comment I will add was that he said, "Stocks should be available after the first of the year."

January 19, 1971

[Proposed by Bangor Punta and Piper]

393. The daily volume of Piper stock on the New York Stock Exchange from November 1 through December 20, 1968 (See Table of stock prices) was less than 2500 shares, except for three days. This could be characterized as a thin market. The largest daily volume in Piper during that period (11,000) shares) occured on December 10, when the Dominick Fund sold 10,000 shares on the New York Stock Exchange. 9000 of these shares were purchased by accounts managed by J.M. Hartwell, as set forth in Bangor Punta Finding 387.

Muriel Siebert (a New York resident), a member of the New York Stock Exchange and a registered broker-dealer, testified at deposition, p.20,

A It is a very thin market. Piper used to trade very little on the board.

[Proposed by Bangor Punta and Piper]

394. When asked at deposition about the number of shares of Piper he planned to buy, Mr. Siegel testified, at pp. 52-53,

A No, I don't think we put a figure one way or another. We had a, I think, a limitation with the committee of six million dollars in any one security.

And so, my guess would be at that point, certainly in buying a few thousand shares, we were not talking about --

You know, not knowing, number one, whether the stock would come in, and, I might say, that Piper was relatively inactive in trading, and it would certainly not give you an idea that you were going to buy any blocks for cash.

[Proposed by Bangor Punta and Piper]

395. On December 30, 1968, Chris-Craft issued instructions to Mitchell Hutchins, which executed orders on the New York Stock Exchange for the purchase of 5200 shares of Piper for Account 100. This was the first order executed for Chris-Craft for the purchase of Piper, and the first transaction for Account 100. 5000 of these shares of Piper represent sale transactions on the New York Stock Exchange by the specialist for its own account.

[Proposed by Bangor Punta and Piper]

396. On January 3, 1969, Chris-Craft issued instructions to Mitchell Hutchins, which executed orders on the New York Stock Exchange for the purchase of 36,100 shares of Piper for Account 100. 34,200 of these shares represented sale transactions at $54 executed on the New York Stock Exchange on behalf of Madison Fund, Inc., by its broker, Muriel Siebert. This constituted Madison Fund's entire position in Piper. Madison Fund's records indicate that Muriel Siebert informed it that a buyer for its Piper shares was available. Madison Fund did not inquire who the buyer was.

January 19, 1971

[Proposed by Bangor Punta and Piper]

397. Madison Fund began purchasing Piper on January 30, 1967, and had accumulated 56,800 shares in over 50 transactions by April 10, 1968. Between September 26, 1968 and December 6, 1968 Madison Fund sold 22,600 shares on the New York Stock Exchange in 12 transactions at prices ranging from 52 to 56. After December 6, 1968 through January 3, 1969, Madison Fund sold no Piper stock. After December 6 through December 23, 1968, an aggregate of 17,600 shares of Piper were traded on the New York Stock Exchange at prices ranging from 52 1/4 to 55 5/8. In November 1968, Madison Fund was willing to sell Piper stock at $52.

[Proposed by Bangor Punta and Piper]

398. On January 6, Chris-Craft issued instructions to Mitchell Hutchins, which executed transactions on the New York Stock Exchange for the purchase of 22,000 shares of Piper for Account 100. 10,000 of these shares represented sale transactions executed on the New York Stock Exchange on behalf of The Chemical Bank by its broker, Muriel Siebert. Chemical Bank had been told by its broker that there was a demand for the stock and there was probably a buyer on the floor for the shares. Of the remaining shares, 10,100 shares represent sale transactions on the New York Stock Exchange by the specialist for its own account.

[Proposed by Bangor Punta and Piper]

399. On January 7, Chris-Craft issued instructions to Mitchell Hutchins, which executed orders on New York Stock Exchange for the purchase of 700 shares of Piper for Account 100.

[Proposed by Bangor Punta and Piper]

400. On January 8, Chris-Craft issued instructions to Mitchell Hutchins, which executed orders on the New York Stock Exchange for the purchase of 30,900 shares of Piper for Account 100. All but 200 of such shares represented sale transactions executed on the New York Stock Exchange on behalf of Keystone Growth (K-2) Fund by its broker, Muriel Siebert, who executed sale transactions for the K-2 Fund's entire position in Piper on that date.

January 21, 1971

883A

[Proposed by Bangor Punta and Piper]

401. Dean LeBaron, manager of the K-2 Fund, testified at deposition, p. 16,

Q Do you recall having any conversation with anyone at Keystone at or about the time you prepared this memorandum regarding how you would liquidate this position?

A If I remembered the conversation with Dave Ralff, [referred to in finding 382] at the time this was done, I probably would have conveyed that to the head of the Trading Department. I do not specifically remember doing so.

[Proposed by Bangor Punta and Piper]

402. The following table shows the trade dates of purchases of Piper by Chris-Craft over the New York Stock Exchange from December 30, 1968 through January 8, 1969, and total trading in Piper over the New York Stock Exchange during that period. Purchase transactions executed for Account 100 on the New York Stock Exchange totalled 94,900 shares of Piper, or 94% of the total of 100,800 shares of Piper traded over the New York Stock Exchange during that period, and 6% of the outstanding stock of the company. The closing price of Piper on December 30, 1968 was 53 5/8. The closing price of Piper on January 8, 1969, was 52 1/2.

January 19, 1971. 885 A

[Proposed by Bangor Punta and Piper]

TABLE OF NYSE TRADING IN PIPER STOCK

Trade Date	Total Piper Volume	Volume of Chris-Craft Transactions	NYSE Prices		Chris-Craft Transaction Prices	
			High	Low	High	Low
Dec. 27	300	-0-	53	53	-0-	
Dec. 30	5,700	5,200	53 5/8	52 3/8	53	52 1/2
Dec. 31	300	-0-	53 1/2	53 1/8	-0-	
Jan. 2	1,100	-0-	53 5/8	53 1/8	-0-	
Jan. 3	36,300	36,100	54	53 1/8	54	53 1/2
Jan. 6	22,100	22,000	54 1/2	54	54	54
Jan. 7	2,500	700	53 3/4	53	53	53
Jan. 8	32,500	30,900	52 1/2	53 1/2	52 5/8	52 1/2

[Proposed by Bangor Punta and Piper]

404. Regarding Chris-Craft's decision to purchase Piper stock, Mr. Siegel testified at deposition at p. 56:

Q When was it, the first time that you considered the acquisition of Piper's stock?

A When was the first time I considered it?

Q Yes.

A It might have been a day or two before, specifically Piper. [the first purchase, on December 30]

Q Was this an idea that was yours initially or was it suggested to you by somebody else?

A I think I can take the blame for this.

[Proposed by Bangor Punta and Piper]

405. Mr. Siegel testified at deposition, at p. 171, regarding a telephone conversation he had with Mr. Rochlis about Chris-Craft's first purchases:

A It might have been even on the 29th. It might have been the morning of the 30th. I really don't remember clearly. But it was right -- the decision to buy stock was right on the morning of the first purchase, because -- either that, or after the close of the market the night before, because it didn't take much convincing to say, after looking at the capitalization, to say we should take a little stock and buy a little stock in it, and take a look at it.

We all agreed that the light aircraft business was an interesting one. We knew that most of the board felt the same way, because we had gone through negotiations with Ted Smith a year or so prior to that.

[Proposed by Bangor Punta and Piper]

406. Mr. Siegel testified at deposition concerning the result of Chris-Craft's first purchases at p. 176:

> Frankly, I think we were all amazed how heavy [illegible] was coming in, because we had no idea that the Funds were selling.
>
> Apparently the Funds knew that the earnings were not that good.
>
> As a matter of fact the opinion later on was that the management had never hit the projection. That was what one of the Fund managers once told me that the management of Piper had never hit the projection.

ONLY COPY AVAILABLE

January 19, 1971

[Proposed by Bangor Punta and Piper]

407. Mr. Burns testified at deposition that with respect to the purchases of Piper stock referred to in Findings 396, 398 and 400, he believed that such transactions originated with offerings to sell the stock from the floor of the New York Stock Exchange, which he then relayed to Mr. Siegel.

[Proposed by Bangor Punta and Piper]

408. Mr. Siegel testified at deposition, at pp. 286-288,

Q Do you recall having any discussions with anybody at the firm of Mitchell, Hutchins concerning Chris-Craft's interest in acquiring Piper securities prior to December 30, 1968?

A No.

Q Do you recall having any discussions with a Mr. Ralff of Mitchell, Hutchins concerning acquiring Piper securities, prior to December 30, 1968?

MR. LIMAN: Spell that name.

MR. RYAN: R-a-l-f-f.

A I don't know Mr. Ralff, per se.

Q A Mr. Cooney of Mitchell-Hutchins?

A I don't remember specifically that name, either.

MR. LIMAN: The question is, did you ever speak to them.

Q The question is, did you ever speak to Mr. Cooney prior to December 30, 1968 concerning Chris-Craft acquiring shares of Piper Aircraft?

MR. LIMAN: There is nothing in this record to suggest that he ever spoke to him about anything.

MR. RYAN: I did ask him first if he spoke to anybody at Mitchell, Hutchins, and now I am asking if he spoke with anybody in particular.

Q Did you have any conversations with Mr. Spencer of Mitchell, Hutchins, concerning acquiring shares of Piper Aircraft, prior to December 30, 1968?

A I don't believe so.

Q Do you recall having any discussions with Mr. Burns of Mitchell, Hutchins, concerning acquiring shares of Piper Aircraft Corporation on behalf of Chris-Craft?

MR. LIMAN: Is this at any time?

MR. RYAN: Prior to December 30, 1968.

A The answer is that I don't believe so.

Q Do you recall requesting anyone at Mitchell, Hutchins to ascertain -- and this is again prior to December 30, 1968 -- asking them to ascertain whether any blocks of Piper Aircraft securities were available for sale?

MR. LIMAN: I am going to object to the form. I have no objection to your asking him, did he ask. You are saying, does he recall.

Q Did you ask anyone at Mitchell, Hutchins?

A No, I did not.

Q As a specific question, did you ask Mr. Burns of Mitchell, Hutchins whether he would attempt to locate blocks of Piper Aircraft securities for sale prior to December 30, 1968?

A No, I do not believe so.

Q Did you ask Mr. Cooney if he would attempt to locate blocks of Piper securities available for sale prior to December 30th?

A Not to the best of my memory.

[Proposed by Bangor Punta and Piper]

409. Spencer testified at deposition, at pages 11, 12 and 14, that to the best of his recollection he first learned of Chris-Craft's interest in Piper securities after January 1, 1969 in a telephone call from Mr. Cooney, a Mitchell Hutchins employee.

He testified further at deposition, at p. 15,

Q Did you ever have any conversations with Mr. Siegel or anyone else at Chris-Craft prior to this conversation or call from Mr. Cooney, concerning Chris-Craft's possible interest in the light aircraft industry?

A No.

Q In Chris-Craft's interest in Piper Aircraft?

A No.

January 19, 1971

[Proposed by Bangor Punta and Piper]

411. On August 9, 1968 Chris-Craft opened a custody account at the Chase Manhattan Bank ("Chase") and has maintained the account in the name of "C.M.B. as custodian for Chris-Craft Industries, Inc." On January 7, 1969, Chris-Craft opened another custody account at Chase in the name of "C.M.B. as custodian for Fifty Four Seven Six Seven." Pursuant to Chris-Craft's instructions, Mitchell Hutchins delivered all Piper stock purchased through Account 100 to Chase for the account of Fifty Four Seven Six Seven.

[Proposed by Bangor Punta and Piper]

412. On January 14, Chris-Craft issued instructions to Shields & Co., which executed orders on the New York Stock Exchange for the purchase of 3700 shares of Piper. All 3700 shares represented sale transactions executed on the New York Stock Exchange by Shields & Co. for Park Avenue Funding Co., N.V., a Hartwell account.

[Proposed by Bangor Punta and Piper]

413. H.V. Sherrill, a senior partner of Shields & Co. and a Chris-Craft director, testified at deposition, pp. 113-114,

Q Do you know whether Shields & Company acted for the buyer or seller in that transaction?

A We acted for both buyer and seller. The buyer in the transaction was Chris-Craft Industries. Perhaps I ought to clarify this for the sake of brevity; if I explain this transaction, I think it may eliminate the necessity of further to do about it.

Q I wish you would.

A It is my understanding that these shares were held by a customer of Shields & Company, and in the normal course of business he came into Shields & Company, as a broker, and asked Shields to sell these shares for them.

At this time Shields & Company was aware of the fact that Chris-Craft Industries was a buyer of Piper stock. Shields contacted Chris-Craft Industries and asked if they would be interested in buying the 3,700 shares that a customer of Shields had offered to sell.

Chris-Craft said they would buy the stock. And, as this memorandum letter of January 23, 1969, indicates, they did buy it.

Q Were you consulted about the transaction at the time it was made?

A I was.

Q Did you handle the contact with Chris-Craft about it?

A Yes, I did. And I didn't know who the seller was.

[Proposed by Bangor Punta and Piper]

414. On January 20, Chris-Craft issued instructions to Goodbody & Co. and Robinson & Company, Inc., which executed orders on the New York Stock Exchange for the purchase of 800 shares of Piper on behalf of Chris-Craft. On January 21, Chris-Craft issued instructions to Robinson & Company, Inc., which executed orders on the New York Stock Exchange for the purchase of 3200 shares of Piper on behalf of Chris-Craft.

[Proposed by Bangor Punta and Piper]

415. On December 1, 1968 Technology Fund ("Tech Fund"), was the owner of 101,100 shares (6%) of Piper, which was the largest holding of Piper stock by any fund at that time, as reported by the Vickers Guide to Investment Company Portfolios.

[Proposed by Bangor Punta and Piper]

416. Thomas Williams (an Illinois resident), a Vice-President of Supervised Investors Services ("SIS"), the manager of Tech Fund, and a member of SIS's investment committee, testified at deposition that during the week prior to January 16, 1969, Tech Fund had noticed peculiar activity in the trading of Piper stock, and had decided to find out why. It was reported to Mr. Williams that Mitchell Hutchins was the buyer. On January 16, 1969, Roger Spencer and John Coleman of Mitchell Hutchins met with Mr. Williams at Tech Fund's offices. Mr. Williams testified at deposition, pp. 40-41, 49-50, and 52-53,

A In the course of a conversation, Mr. Holland [of Tech Fund] [a Mitchell Hutchins [illegible]] indicated that Mr. Coleman would like to come over and talk to me, not as a part of the conversation, but John wanted to come over and sit down. Fine.

At that point he brought Mr. Spencer with him, and we had a conversation in my office.

Q When was that conversation, Mr. Williams?

A January 16th.

Q Would you relate the substance of the conversation?

A The substance of the conversation was that Mitchell-Hutchins was acting for someone who wished to buy Piper, and I believe it was disclosed that Chris-Craft was the accumulator.

There was not a conversation to the effect of what we should do, whether we should -- We couldn't do anything, to be realistic.

At that point we realized, one, we had over 5 percent of the stock; two, the information was of a nature that we did not wish to use it, and that was the end of the conversation.

Q When you say that you couldn't do anything with it at that point, what do you mean by that?

A Well, we didn't wish to sell it.

Q This was as of January 16th?

A Right. We did not wish to buy it, to buy the stock, to buy Piper in the open market.

So it was a piece of information that we didn't use strictly -- well, I guess we did use it in the sense that we didn't sell. But that was the end of the conversation.

Q What was the reason that you did not wish to sell it as of January 16th?

A Well, if there was an accumulation, we did not wish to sell into this kind of a thing. We weren't sure of how far they would go, we weren't

sure how serious they were, but there was never any -- there was no conversation to sell it. I don't --

Q Well, I want to get a little specific.

You have testified, I think your words were that you did not wish to sell it.

What I would like to know is what were the reasons that entered into that discussion not to sell as of January 16th?

A We thought the stock would go higher.

* * *

A The first subject of the conversation was that our Mr. Holland had discovered that Mitchell-Hutchins had been purchasing, was interested in purchasing some Piper stock, I guess it was for Chris-Craft, and since he had uncovered their buying or their interest to buy, that they felt that they had an obligation to have us be fully informed as to what was going to happen, what was the intent. And the intent, I gathered at that point, was to get enough proxies to block -- I don't recall what they were attempting to do. It was either block the meeting or show a disinterested large minority.

Q When you say that they felt they had an obligation, who is the "they"; Mitchell-Hutchins?

A Yes.

Q Or Chris-Craft?

A No, Mitchell-Hutchins.

Q Mitchell-Hutchins.

What was the nature of the obligation, Mr. Williams? Why did an obligation exist for them to do that?

A Well, in the course of a normal -- We utilize the research services of Mitchell-Hutchins quite extensively.

Q So, in other words, to perpetuate the good relations between your firm and Mitchell-Hutchins, they thought they should come forward?

A That is normal.

Q That was your understanding?

A That was my understanding.

* * *

Q Now during that meeting, or subsequent thereto, didn't you inquire of Mr. Holland how he had uncovered it, in the light of Mitchell-Hutchins' statement that they felt they had an obligation to come forward?

A That is not -- let's go back. That is not Mitchell-Hutchins talking, that they think they have an obligation. I thought they had an obligation.

Q I see. So your testimony is now that Mitchell-Hutchins did not at that meeting indicate that they were coming forward because they felt they had an obligation?

A Well, I guess that's true. There was something to that effect, that we should know.

Q And that was said by Mitchell-Hutchins?

A I can't be that definitive.

Q Mr. Williams, I am not trying to lead you astray. I am just trying to clear the record, because you testified earlier that Mitchell-Hutchins indicated at the meeting that because Mr. Holland had uncovered the fact that they were either interested in buying or buying, that they had an obligation to come forward.

Now I understand your testimony now is that that is your best general recollection?

A That is my best general recollection.

Q Thank you.

[Proposed by Bangor Punta and Piper]

417. Thomas Williams further testified at deposition, at pp. 43-45, 46-47, and 48-49,

Q What specifically did Mr. Spencer or Mr. Coleman report to you concerning Chris-Craft's interest in purchasing the Piper stock?

A The tenor of the conversation was that they had an interest, they realized we were a large stockholder, would we join with them in any sort of a tender offer.

My answer was no, we don't operate that way. We did not take an active role in the management of any of our investments.

There was not a conversation as to whether or not we would sell the stock to them.

The conversation was, would we join them in any sort of a -- would we --

And I said no, we would not join a third party trying to take over a company in which we had an investment, that that is against our policy.

Q What did you understand they meant by "joining in"?

A I was under the impression that they would mean vote with them, them and/or friends or other people like us, voting in a block.

Well, there was an annual meeting coming up shortly after that, and I was under the impression that I was being solicited to join in a joint action among others to vote my proxy against the management. That was my impression. And I refused to do that.

Q Was that impression that you had brought about by the words used by Mr. Spencer and Mr. Coleman?

A Yes. Although it was --

Let me just expound on this a little bit. It was a strange conversation, because I wasn't really definitively sure of what they wanted.

Q Did you ask what they wanted?

A No.

Q But your impression, your clear impression was, at the end of the meeting, that what they wanted was for you to join in?

A Right.

Q Was it also your impression that they were making this suggestion to you on behalf of Chris-Craft?

A Yes.

Q Did you ask whether they had spoken with anyone at Chris-Craft before coming and having this conversation with you?

A No.

Q Was it your understanding that they had?

A It was my understanding, yes.

* * *

Q In other words, Messrs. Spencer and Coleman made the proposal to you, and you listened and then reacted negatively to it?

A Right.

Q Now after you told them that you did not want to join in this tender offer with Chris-Craft or join in the voting with Chris-Craft, was there a conversation as to your possible sale of the Piper stock?

A Not at that time, no.

Q Was there such a conversation at a later time, that you recall?

A No. Well, not prior to -- there was no conversation about selling to Chris-Craft prior to the telephone call from Mr. Hawkinson.

Q Which was on --

A A week later.

Q I see. We will get to that a little later on. I just wanted to fix the time.

After you indicated that you would not be interested in such a venture, what, if anything, did Messrs. Spencer or Coleman say?

I don't recall the conversation. I don't recall.

Q You don't recall what they said?

A No.

Q You recall there was conversation following?

A Yes, but I don't know what it was -- I don't --

Q Did they indicate that they would go back and speak to Chris-Craft and convey your views?

A No, not that I recall.

Q Did they indicate that they would take your views under consideration and be back to you at some later point?

A No.

Q Well, I asked you --

A I don't think so.

* * *

Q Did the conversation begin by their conveying to you this proposal of joining in the voting and tender offer?

A Well, at that point there was no discussion of a tender offer.

Q I thought you had testified earlier, Mr. Williams, that your impression was that they were asking you to join in such a venture?

A Not a tender.

[Proposed by Bangor Punta and Piper]

418. Mr. Williams testified at deposition that after the meeting on January 16, he reported what had happened to John Hawkinson, the President of SIS.

Mr. Hawkinson testified at deposition, at pp. 22-23,

BY MR. RYAN:

Q Did there come a time when someone advised you that there was a possible purchaser of the entire Piper block?

A Yes.

Q Do you recall when that was and who spoke to you, approximately?

A Well, it was sometime in January of 1969 when officials of Chris-Craft expressed an interest in purchasing the entire block.

Q Prior to this expression of interest by Chris-Craft, had you, or to your knowledge, did any member of your organization of your firm discuss the possible sale of the Piper shares to Chris-Craft or to anyone else?

A It is possible that a member of the Research Department or the Investment Committee discussed the possible sale to Chris-Craft or someone else, but I was not aware of those discussions at the time.

Q Did anyone in your firm advise you of any conversations he may have had with Mr. Spencer of Mitchell Hutchins concerning a disposition of this Piper block?

A No.

Q Did you ever discuss the disposition of the Piper stock with Mr. Spencer?

A Only at the time of the meeting with Chris-Craft Industries.

[Proposed by Bangor Punta and Piper]

419. In mid-November, 1968, Tech Fund had decided to sell its block of Piper. Tech Fund's decision was based in part on a Research Department memorandum dated November 19, 1968, internally distributed and produced in this action pursuant to subpoena, which stated in relevant part,

At 52, Piper is adequately priced and little appreciation is expected until the anticipated extremely favorable third quarter. Quite possibly Piper could go to 18 times 1969 earnings, which produces a price of 63, however, at that level, it would be fully priced and sale would be in order except that before sale, the Pocono's outlook should be reviewed, as it really dominates Piper's future.

Tech Fund believed that because of the size of the block, such a liquidation would be difficult, and the Fund would consider a sale off the floor of the stock exchange. The Fund made no efforts to locate a purchaser at that time because it had concluded no buyer would be willing to pay $10 over the then market.

[Proposed by Bangor Punta and Piper]

420. With respect to Tech Fund, Herbert Siegel testified in part at deposition, pp. 114-116:

Q When did you first hear about a block of stock being available from Technology Fund?

A I believe sometime in the beginning of January.

Q Can you fix the date on that at all, the first week, the second week, how long in advance of the date that you bought it, that you made up your mind to buy it?

A That we found out that they had the block?

Q Yes.

A It might have been as much as a week that we were told they had a block, but they didn't want to sell it, and when Mr. Hawkinson comes to New York, maybe you can sit down and talk to him, you know.

Q From whom did you get this information?

A I believe from Roger Spencer, Mitchell, Hutchins.

Q I may be confused. As I understand it, you believe that you may have learned about this block about a week before Mr. Hawkinson came to New York to negotiate the sale of that stock?

A Yes. We learned that there was a block, I was told there was a block about that time.

Q This was from Mr. Spencer?

A Yes.

Q Which was in a phone conversation with Mr. Spencer?

A Yes, to the best of my recollection. He said that they might be willing to sell. I said, "Find out whether you can cross the block."

And I think in the course of a few days or so, he said they do not want, they wouldn't sell it on the market, he is not interested in selling at this price.

I said, "Where can we talk to him?" And that was how Mr. Spencer, you know, mentioned to me that Hawkinson might be in New York.

I think the fact that he was supposed to be due in New York, I was told in advance of the meeting.

Q This was learned in a conversation you had with Mr. Spencer?

A That is correct.

Q What did you do with that information? Did you tell anybody else?

A I am sure we talked to Len and Jim, and I said that the Fund has a block of stock, and we may be able to buy it, but they obviously don't want to sell it on the market.

Mr. Siegel was interested in talking to Tech Fund about selling their Piper stock to Chris-Craft. Mr. Spencer and Mr. Coleman arranged a meeting between Mr. Siegel and Mr. Hawkinson for January 22, 1969. Mr. Gordon testified that Mr. Siegel told him on January 21 (the evening before the appointment with Hawkinson) that Tech Fund's Piper stock was probably available, and that he (Gordon) believed that the source for this information was Roger Spencer.

[Proposed by Bangor Punta and Piper]

422. In the afternoon of January 22, 1969, Messrs. Hawkinson, Spencer and Coleman met with Mr. Siegel and Mr. Gordon at Chris-Craft's New York offices. The initial discussions had to do with Chris-Craft's current operations, current financial position, and future plans, which, in general terms, were expansion into the leisure time industry.

Later in the meeting, Mr. Siegel brought up Chris-Craft's interest in acquiring Tech Fund's block of Piper. In the absence of the Mitchell Hutchins representatives, Mr. Siegel offered to buy Tech Fund's Piper stock for $60 a share and adjust the price later if Chris-Craft made a public cash tender offer at a higher price. Mr. Hawkinson said he would accept $65 per share net, to which Mr. Siegel agreed. This constituted a total purchase price of $6,571,500.

Mr. Hawkinson testified at deposition, at p. 35, with respect to the negotiations with Mr. Siegel, in part,

He said that their purchase at $65 a share was subject to the revocation of a proxy which had previously been given to the Piper management. I said that we would endeavor to revoke the proxy, and we would give a proxy to the designees of the Chris-Craft management.

Revised 1/22/71

918A

[Proposed by Bangor Punta and Piper]

425. As of January 22, 1969, certificates representing 63,300 shares of Piper had been delivered to Chris-Craft or its brokers. Also, purchase transactions for an additional 39,300 shares been executed by Mitchell Hutchins on the New York Stock Exchange for Account 100. On January 22 the settlement date had not been reached on 4,000 of those 39,300 shares. Of the remaining 35,300 shares, 30,700 represented those shares for which sale transactions had been executed on the New York Stock Exchange on January 8 on behalf of Keystone. Mitchell Hutchins sent Chris-Craft confirmation slips dated January 8 confirming this transaction and showing the settlement date to be January 15. On January 14, Chris-Craft mailed payment for these shares by check dated January 14, which Mitchell Hutchins received on January 16. Annexed hereto are the records of Keystone, its custody agent and its broker. Mitchell Hutchins' statement of Chris-Craft's Account 100 for the month of January, 1969, shows an entry for all such 30,700 shares in the column "bought received or long" on January 15. Mitchell Hutchins delivered certificates for Piper shares to Chris-Craft's numbered account at the Chase as follows: 5200 shares on January 13, 58,100 shares on January 16, 31,600 shares on January 24.

FORM 47-13-S

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IN ACCOUNT WITH

STERN, LAUER & CO.
120 BROADWAY
NEW YORK, N. Y. 10005

THROUGH THE COURTESY OF

MURIEL F. SIEBERT
MEMBER NEW YORK STOCK EXCHANGE
120 BROADWAY, NEW YORK, N. Y. 10005

KEYSTONE CUSTODIAN FUND K2

It is our practice to charge interest monthly on debit balances in customers' margin accounts. The rate of interest is subject to change from time to time because of fluctuating money rates or other reasons. Interest is computed daily at the rate currently in effect.

DATE	QUANTITY BOUGHT RECEIVED	✓	QUANTITY SOLD DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE
				BALANCE				
2/31 69	100				11 7/8	1,012.5[illegible]		1,012.[illegible]
[illegible]/15 69			10,800	PIPER AIRCRAFT	52 1/2		563,28[illegible]	
[illegible]/15 69			19,000	PIPER AIRCRAFT	52 1/2		990,972.5[illegible]	
[illegible]/15 69			900	PIPER AIRCRAFT	52 1/2		46,[illegible]05.0[illegible]	
[illegible]/15 69			100	PIPER AIRCRAFT	53 1/8		5,263.0[illegible]	1,604,518.[illegible]
[illegible]/15 69	18,[illegible]00			PIPER AIRCRAFT	RECD	990,972.5[illegible]		
[illegible]/15 69	10,[illegible]00			PIPER AIRCRAFT	RECD	563,28[illegible].6[illegible]		
[illegible]/15 69	100			PIPER AIRCRAFT	RECD	5,263.0[illegible]		
[illegible]/15 69	[illegible]00			PIPER AIRCRAFT	RECD	46,[illegible]05.0[illegible]		1,012.[illegible]

PLAINTIFF'S EX: 83
DEFENDANT'S EX: ——— FOR ———
DATE: 6/2/70 PHILIP FELDMAN
SHORTHAND REPORTER

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920 A

THE CHASE MANHATTAN BANK, N.A. NEW YORK, N.Y. 10015

Our Ref. GS 67104

Delivery Date 1/15/69

1/9/69

STIEBEL MURIEL A/C KEYSTONE CUST FD. K-2

TOTAL PRICE | BROKER'S COMMISSION | TAX

PRINCIPAL | INTEREST | INTEREST (1) OR DISCOUNT (2) | PAID BY BROKER | CONFIRMATION CHARGE | AMOUNT CREDITED

$1,606,331.00 | $1,606,331.00

30.800 PIPER AIRCRAFT CORP. COM.

920-1-023180 HEAD OFFICE

STATE STREET BANK & TRUST CO.
BOSTON MASSACHUSETTS

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STOCK CLEARING CORPORATION

Credit List for Deliveries by Non-Member Banks through Central Delivery Department subject to the By-Laws and Rules of Stock Clearing Corporation.

222 - CHASE MANHATTAN BANK N
NAME AND CLEARING NUMBER OF DELIVERING NON-MEMBER BANK

54 — NO. OF LIST — JAN 15 1969 — 13 Number — Verification

	RECEIVERS NUMBER	AMOUNT	V
	227	1,[illegible]	
1	03	3,655,693	
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	TOTAL	5,261,[illegible]	

2 When [illegible] stamped on the reverse side hereof, receipt of envelope(s) covering the item(s) listed above is thereby acknowledged by Stock Clearing Corporation

SCC Initial

DELIVERED BY THE CHASE MANHATTAN BANK, N.A. - 902
NON MEMBER OF STOCK CLEARING CORPORATION

CHASE MANHATTAN NUMBER 68 6710

(PERSONAL TRUST - SECURITIES DIVISION)

If VALUE is specified herein in dollars, the described securities are received, against payment to be made concurrently, for delivery to consummate a sale. Payment [illegible]/69 receipt of actual payment in cash by Chase Manhattan Bank, N.A., a security interest in such securities (and the accompanying draft, if any) remains in said Bank.

L 1/9/69
$ 31290
04 388

Type of Transaction (See reverse side)

DELIVERED TO: SIEBERT MURIEL A/C KEYSTONE CUST FD. K-2
STERN LAUER

LOCATION: CO

BASIS PRICE OF PRINCIPAL

TOTAL PRICE

BROKER'S COMMISSION

TAX

INTEREST TO

INTEREST (I) OR DISCOUNT (D)

VALUE $1,606,331.00

AMOUNT OR SHARES: 30,800

PIPER AIRCRAFT CORP. COM.

[illegible] HEAD OFFICE -

STATE STREET BANK & TRUST CO.
BOSTON MASSACHUSETTS

Subject to the by-laws and rules of the Stock Clearing Corporation. Deliver the above securities to the within named Clearing Member and charge the same thereto as stated hereon.

RECEIVED THE ABOVE DESCRIBED SECURITIE

AUTHORIZED SIGNATURE

1

January 21, 1971

[Proposed by Bangor Punta and Piper]

426. Hawkinson testified at deposition in regard to the January 22 meeting, in part, at pp. 33, 36 and 78.

A Mr. Siegel said that Chris-Craft Industries had a very real interest in acquiring a substantial interest in Piper Aircraft and that they were desirous of buying our block of stock.

Mr. Siegel said that they had acquired some Piper stock in the open market. He didn't tell me the amount of Piper stock that they held but said it was substantially less than our block.

He said that they were desirous of effecting the purchase of our block; and if they were to buy it as a block, they wanted to operate very promptly and conclude the transaction within the next two days.

I asked him what his price indications were, and he initially indicated a price of approximately $60 per share.

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He said that if Chris-Craft Industries could acquire our stock, they would give consideration to filing a tender offer for additional shares with the SEC.

* * *

Q You testified, Mr. Hawkinson, that Mr. Siegel said that the transaction had to be consummated within two days. Did he give any reason for that, or did you ask him why two days, what was the rush?

A He indicated that they would request Board representation and one of the proxies in order to obtain Board representation; and that they were proposing, subject to purchasing this block, to making a tender for shares with a tender to be filed with the SEC; and that the time factors in terms of the Annual Meeting and the Board representation, the time factors relative to the tender were such that it required the completion of the transaction within a two-day period.

* * *

A I don't recall who in Chris-Craft of the reprecentatives present said what. Whoever did express themselves at Chris-Craft said that the initial tender, if it were made, would be at a price--at the same price at which we had sold the shares to Chris-Craft or were negotiating to sell the shares to Chris-Craft. They hadn't actually been sold at that time.

[Proposed by Bangor Punta and Piper]

427. On January 22, John Hawkinson called Thomas Williams from Chris-Craft's offices, but outside the presence of Chris-Craft and Mitchell Hutchins representatives. Both Mr. Hawkinson and Mr. Williams were members of SIS's investment committee, and together had the authority to bind Tech Fund. Williams concurred in the sale of Tech Fund's Piper stock to Chris-Craft at $65 net. Hawkinson was assured that Tech Fund could make delivery the next day against cash payment.

Williams testified at deposition, with regard to part of the telephone conversation, at pp. 87 and 96-97,

Q Was there anything more?

A No. Well, let me think.

And that we should buy some Chris-Craft, and which I concurred in that agreement also, that conversation.

Q I am sorry, I didn't get the last answer.

A We discussed the relative merits of purchasing Chris-Craft, which we did, we made up our minds to purchase it because of the added increment

that a Piper acquisition would give to Chris-Craft, if done properly; it looked like they were going to use some debt instrument or cash or non-equity to do it.

* * *

Q At what point in your conversation with Mr. Hawkinson did he indicate that some consideration should be given to your investing in Chris-Craft securities?

A Toward the end of the conversation.

Q In what context?

A Well, it was in the context of maybe we can make some money out of Chris-Craft. That was the context.

Q Yourbest recollection is that Mr. Hawkinson said to you, maybe we can make some money out of Chris-Craft?

A I don't recall how the conversation got started, but it was in the essence of we were talking about how Chris-Craft may accomplish this merger, or whether they could.

Within that conversation was, if they could, and if they could do it in proper manner, we could probably make money out of Chris-Craft.

Q If you were to invest in Chris-Craft?

A If we were to invest in Chris-Craft securities

Q What was your response to that?

A My response to that was yes, if done properly.

Q You could make money off of it?

A We felt we could.

Mr. Hawkinson testified at deposition, at pp. 39-40,

Q Did there come a time when your firm recommended to any of the Funds you represent the purchase of Chris-Craft securities?

A Well, my memory is that subsequent to this transaction involving the disposition of Piper that the Investment Staff recommended the purchase of Chris-Craft securities.

Q Do you recall whether you ever discussed the possibility of investing in Chris-Craft securities at an Investment Committee meeting? And if so, when in relationship to the time you sold -- not you sold --

but the Tech. Fund sold its Piper holdings?

A Well, it was subsequent to that time. I don't know how much time elapsed.

Mr, Williams testified at deposition, at pp. 111-112,

You have testified, Mr. Williams, that one of the factors that led you to agree to the purchase of the Chris-Craft securities was that Chris-Craft indicated to Mr. Hawkinson that there would be a further exchange offer and that you felt, in light of this, the prospects of Chris-Craft's stock appreciating were good, is that correct?

A That's correct.

Q Did Mr. Hawkinson indicate to you during this telephone conversation from New York that Chris-Craft had indicated that there would be this further exchange offer?

A Yes.

Q And it was based on that representation, at least in part, that he recommended and that you agreed to invest in the Chris-Craft securities?

A I would say it was part of it, sure.

Q Is that correct?

A That's correct.

Mr. Hawkinson testified at deposition with regard to the January 22 meeting, in part, at pp. 37-38,

Q Was there any discussion at that time with the Chris-Craft officials concerning what their plans were in the event their tender offer was successful?

A There was no definitive discussion.

Q Was there any discussion concerning the possibility that Chris-Craft might make an exchange offer for the balance of the Piper shares if their tender offer was successful?

A There was no discussion of that. I assumed that that would occur.

Q Did the Chris-Craft officials indicate to you that they were going to seek complete control of Piper, take it over completely and not just a minority position?

A I don't believe they definitively indicated that to me. With some sophistication in these matters, I would assume they would.

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Deposition of Thomas Williams, February 10, 1970
pp. 324-328

EXAMINATION
By Mr. Schlosser:

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Q Just one item I wanted to clear up, Mr. Williams. On Page 86 -- I know you don't have it so I will read it -- in your first day of testimony, I am now in January of 1969 and the telephone conversation you had with Mr. Hawkinson.

You testified:

"It was a reasonably lengthy conversation at which after we had cleaned up the discussion on Piper, that perhaps we ought to take a position in Chris-Craft because at that point it looked like they were going to use a debt or cash or something other than common equity to acquire the Piper or make an attempt at acquisition, and should they do it by debt cash, some route other than equity, it should add

substantially to their earnings."

And later on Page 87 you added:

"We made up our minds to purchase it," Chris-Craft, "because of the added increment that a Piper acquisition would give to Piper Aircraft if done properly. It looked like they were going to use some dead instrument or cash or non-equity to do it."

That was your testimony. Do you stand by that testimony?

MR. MEYERSON: Object to the form of the question.

THE WITNESS: I stand by the testimony.

MR. SCHLOSSER: Q And does that express your basic reason for purchasing Chris-Craft beginning on January 23rd?

MR. MEYERSON: I object to that. The testimony reflects what it stands for. It is clear.

MR. SCHLOSSER: Q Was that --

THE WITNESS: Yes.

Q And, in fact, did Chris-Craft announce a tender offer for $65.00 on January 23rd? Do you acknowledge that?

A Yes.

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MR. MEYERSON: I object to the form of that.

MR. SCHLOSSER: Q On Page 111 Mr. Meyerson asked you the question:

"You testified, Mr. Williams, that one of the factors that led you to a degree to the purchase of the Chris-Craft securities was that Chris-Craft indicated to Mr. Hawkinson that there would be a further exchange offer and that you felt in light of this the prospects of Chris-Craft's stock appreciating were good, is that correct?"

And you answered: "That's correct."

That is on Page 111.

When you stated a further exchange offer, were you referring to the exchangeoffer that was in fact made on January 23rd?

MR. MEYERSON: I object to the form of the question.

MR. SCHLOSSER: You can answer it.

THE WITNESS: Yes.

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MR. SCHLOSSER: No further questions.

E X A M I N A T I O N
(Continued)
By Mr. Meyerson:

Q Mr. Williams, I would like to ask you a question.

A Shoot.

Q With respect to your testimony on Page 111 which reads as follows:

"You testified, Mr. Williams, that one of the factors that led you to agree to the purchase of the Chris-Craft securities was that Chris-Craft indicated to Mr. Hawkinson that there would be a further exchange offer and that you felt in light of this the prospects of Chris-Craft's stock appreciating were good, is that correct?"

"That's correct."

Do you recall that question and that answer?

A Yes.

Q Did Mr. Hawkinson indicate to you that Chris-Craft had indicated that there would be a further exchange offer?

A Yes.

Q And he did not specifically indicate, did he, that the tender offer of which he was talking was January 23rd, is that correct?

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A No. Yes.

Q He specifically used the words a further

exchange offer, is that correct? Isn't that your testimony?

A That's my testimony, but I'm not sure that that specific word was used.

Q What specific word?

A Exchange.

Q But he didn't specifically identify the further exchange offer as the offer of January 23rd, did he?

A I don't recall that.

Q You don't recall that he did?

A No.

MR. MEYERSON: I have no further questions.

The corrections in the transcript were made by letter of Mr. Myerson to Mr. Schosser, March 20, 1970.

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[Proposed by Bangor Punta and Piper]

428. In November or December, 1968, after obtaining a copy of Chris-Craft's prospectus dated October 30, 1968, Tech Fund had considered investing in Chris-Craft's debentures, common stock and preferred stock, but had decided not to do so. When asked at deposition why Tech Fund had decided not to purchase Chris-Craft debentures, Mr. Williams testified, at p. 99,

> A We don't do convertible offerings that much because we -- there is usually a premium over the common that isn't, in our opinion, warranted very often, and the interest rate on a convertible security is often too low to give it any meaningful support.

When asked why Tech Fund had not purchased Chris-Craft common stock, Williams testified, at p. 101,

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A It, that is, again generally, did not offer us the outside potential that we thought it should. You can't have an appreciation.

Q I am sorry, the kind of --

A It did not offer us the percentage appreciation that we were seeking at that point. It was a degree of risk gain.

He testified further, at pp. 89-90, 104-107 and 109,

[With Hawkinson, January 22]

The lengthy conversation went something like this. We had another piece of misinformation that we understood that the Piper family, friends, et cetera, controlled 38 percent of the Piper stock, and we didn't see -- this is part of the conversation -- we didn't see how anybody can take Piper, but if somebody was willing to pay us $63 a share, based on our past, and our past report on the company, our past feeling that $65 was a very, very nice price, and that we couldn't see under, on a fundamental basis -- when I say fundamental, I say from the standpoint of what makes up Piper -- why anyone would pay more than that.

* * *

Q Now, Mr. Williams, you have testified that prior to this meeting of Mr. Hawkinson in New York, you had investigated the possibility of investing in Chris-Craft common and preferred stock?

A Convertible debentures.

Q Well, I know that. But you also testified that you investigated the possibility of investing in Chris-Craft common stock?

A Yes.

Q Now did you also investigate the possibility of investing in Chris-Craft preferred at that time?

A Yes.

Q And your testimony is that you concluded not to do it at that time because you would not realize the appreciation that you wished to realize, is that correct?

A That's correct.

Q What was the change in circumstances between the time you so concluded and January 23rd, when you decided that this an investment that you should make?

A That their purchase of -- that their tender offer for their purchase of our, of Technology Fund block and their subsequent tender offer, that was the change.

Q But their purchase of the Tech Fund block was at a price that exceeded the outermost price that you thought was a high price, is that correct --

A That's correct.

Q -- $63 a share?

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And yet, is it your testimony that notwithstanding that inflated price that they were willing to pay for the Piper block, you thought that this in some way would result in an appreciation of the Chris-Craft stock subsequent to that acquisition?

A Yes.

Q Did you discuss these factors with Mr. Hawkinson prior to giving your consent to purchasing the Chris-Craft stock?

A Yes, as part of this conversation.

Q All as part of this one telephone conversation?

A Yes.

Q Were there any other factors that you considered would present a risk in purchasing the Chris-Craft stock at that time?

A There was a possibility that they wouldn't get Piper. There was that possibility.

Q There was that possibility?

A Sure.

Q And yet, with that possibility, you on the basis of this one telephone conversation agreed that you should invest in the Chris-Craft stock, whereas one or two months before, you had concluded to the contrary, is that your testimony?

A That's correct.

Q When Mr. Hawkinson and you discussed his trip to New York after the time you received your information from your unidentified source that you have talked about, did he indicate to you at that time that he would also discuss a possible investment in Chris-Craft?

A Not to my knowledge, no, not to my knowledge.

Q And at your meeting on January 10th with Mitchell-Hutchins, did you discuss with him at that time a possible investment by your firm in Chris-Craft?

A Not to my recollection, no.

Q So is it your testimony that between the time you concluded that you did not wish to investigate the Chris-Craft stock because you wouldn't realize the appreciation that you wished to, and the time that Mr. Hawkinson called you from New York at his meeting, you heard of no discussions relating to a possible investment in Chris-Craft stock?

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A That's right.

Q When Mr. Hawkinson called you from this meeting in New York, did he indicate who had raised the question of purchase, of your investing in Chris-Craft stock?

A No, I thought it was his idea.

Q But he hadn't discussed this idea with you prior to his going to the meeting, is that correct?

A That's right.

Q Why did you think it was his idea?

A I didn't talk to anybody.

Q What?

A I didn't talk to anybody else.

* * *

Q Prior to your purchasing Chris-Craft securities on January 23rd, didn't you believe that some further investigation as to the desirability of investing in Chris-Craft was in order, in light of your decision not to invest roughly a month earlier?

A No.

Q And the reasons that you thought that there was no need for further investigation are the reasons that you have already testified about?

A Yes.

January 20, 1971

[Proposed by Bangor Punta and Piper]

429. Williams instructed Tech Fund's trading department to buy 50,000 shares of Chris-Craft common stock and 10,000 shares of Chris-Craft $1.40 convertible preferred stock (then convertible one-for-one into common). Tech Fund's order ticket for the purchase of the common stock bears at the top the stamp "1969 JAN 22 PM 3 59" and the handwritten date "1/23/69." Tech Fund's records indicate that the first purchase of Chris-Craft securities was made on January 23, after the public announcement of Chris-Craft's exchange offer. Between January 23 and February 25, Tech Fund bought a total of 50,000 shares of Chris-Craft common stock and 10,000 shares of Chris-Craft $1.40 preferred stock. An additional 116-1/4 shares of preferred stock were received as a stock dividend in February.

[Proposed by Bangor Punta and Piper]

430. On March 28, 1969 Tech Fund sold 1600 shares of Chris-Craft common stock. A Tech Fund research department report on Chris-Craft dated April 1, 1969 (Bangor Punta Exhibit 5) stated in relevant part,

Sources: Company Prospectus, assistant treasurer of the Company and Roger Spencer of MITCHELL HUTCHINS

* * *

SUMMARY & CONCLUSION:

In summary, I believe we should sell our holdings in Chris-Craft. Briefly, here are the positive and negative factors:

Positive

- Concentration on one industry--leisure time--is a decided plus these days for conglomerates.
- A new management team is gradually being developed from the outside. Joseph KORDICK, a top manager from Ford, has just been appointed to head the troublesome boat division. And Lee IACOCCA of Ford is rumored to be on the way.
- A substantial earnings improvement in the boat division is possible over the next few years. This could affect per share earnings of 50¢ or more this year on a fully diluted basis.

Negative

- Acquisition of Piper is now becoming extremely expensive--better than 24 times Piper's 1969 earnings and it is receiving considerable opposition. Failure to complete the acquisition could be extremely expensive.

- Chris-Craft is selling at about a 33% premium over the average conglomerate on a PE basis--while this premium may be justified, it is difficult to justify any additional PE appreciation.

Taking all these factors into consideration, the maximum appreciation potential is 22% based on a PE of 25 and $2.25 fully diluted earnings. In view of the risk involved, I do not believe that Chris-Craft is a good investment.

* * *

FUTURE PERFORMANCE OF DIVISION:

Certainly there is room for substantial improvement in the boat division from an earnings standpoint. After tax margins in fiscal 1968 was less than 2% -- probably about 1.5%. For fiscal 1969, 4-5% after tax margins are expected. However, because of the highly seasonal nature of the boating industry, it is impossible to accurately predict the results of the division on a quarter to quarter basis. More than 75% of the Chris-Craft boats are shipped in the months of April-June. The period is very hectic for all boating companies and full of many uncertainties. For example, because of the tremendous volume being shipped during the period there is always an extreme shortage of shipping equipment. This causes many delays and in some cases cancellations. Furthermore, any miscalculation about the size and needs of the market can spell disaster. It is hoped that the new management team will be able to minimize these problems and improve margins.

In terms of increasing sales volume, I think that management may have a more difficult time. The boating industry is only growing at 5-6% per year and in recent years Chris-Craft has been growing at 10% per year. Furthermore, the company has been very successful in the over 35 ft. class where 65% of their volume is concentrated. What makes this performance somewhat amazing is that the smaller boat segments are growing faster than the large boats segments for the industry as a whole. Thus, on the surface, market penetration for Chris-Craft in large boats appears to be improving much faster than the industry.

Another reason for which I believe management will have a difficult time increasing sales, is that Chris Craft has one of the most extensive dealer networks -- 400 dealers scattered throughout the U.S. and several foreign countries. In summary, for the boating division, margins can be

improved but the rate of sales growth is not likely to be improved.

The TV division is extremely well run. It is highly doubtful that margins can be improved over the present 10% after tax now being achieved. Growth is pretty well tied to the industry with exception that Chris-Craft can acquire two more UHF and two more additional VHF stations. At this time I believe that the stock adequately reflects the TV division and that there is little upside potential that can be attributed to improved margins or growth. By the same token, so long as the present performance is maintained there should be little downside risk.

The last division -- Baldwin-Montrose-NAFI -- is the "dog" of the family. It is not likely that management can or will try to improve the 5-6% after tax margins. As previously indicated, management will eventually dispose of this division

I believe that the operations of this division have little effect on the PE. Even if the division is sold, I believe that the effect will be negligible.

PIPER:

Pending clarification, Chris-Craft owns approximately 1/3 of Piper. If Chris-Craft is successful in acquiring control of Piper, 40-50¢ per share could be added to overall corporate earnings on a fully diluted basis. However, this is a big "if" and I do not see any reason for Chris-Craft's PE to increase if the acquisition of Piper is successful

At $69 Piper is currently selling at 24 times next year's earnings of $2.90. This PE is rather high in comparison to Beech at 18 and Cessna at 13 times.

In view of the rather mediocre prospects for the General Aviation market, the vulnerbility of the industry to a mild recession, the high PE of Piper, and the possibility that the merger will not go through thus leaving Chris-Craft with a high cost stock, I see nothing but uncertainties for this deal.

MARKET VALUATION FOR CONGLOMERATES

In the recent study presented in "The Outlook", the average PE for 25 conglomerates was 18.3 times 1968 reported earnings -- not fully diluted. On a comparable basis, Chris-Craft, at 46-3/8 and a $1.89 before dilution is currently selling at 24.5 times 1968 earnings. Only Litton Industries -- 30.7, National General -- 41.8, Republic Corp. -- 25.5, and Teledyne -- 26.7 are higher.

Despite the danger of generalizations, comments about Chris-Craft in relation to other conglomerates are appropriate. First, in terms of long range objectives, Chris-Craft must be awarded a decided plus because it is concentrating on a single industry -- leisure time.

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Second, in terms of the balance sheet, despite the amount of

long term debt and convertible issues, the percentage of common equity is about 40%. This compares very favorably with the conglomerate industry average of 38% presented in "The Outlook".

In terms of relative performance to other conglomerates, I do not see much potential for Chris-Craft on a PE basis. While its overall objectives and capitalization put it in a favorable light, the market has pretty well taken this into account because the stock is selling at about 33% higher on a PE basis than the industry average.

The minutes of an Investment Committee meeting, dated April 1, 1969, authorize the sale of 50,000 shares of Chris-Craft common at 46 and 10,116 shares of Chris-Craft $1.40 preferred at 45, Tech Fund's entire position in each security as of March 27.

January 20, 1971

[Proposed by Bangor Punta and Piper]

432. Regarding Technology Fund, Roger Spencer testified at deposition, at pages 23-26,

Q Did you ever speak to anyone at Technology Funds, inquiring whether their [Piper] shares were available for sale?

A No, that is not my function.

Q Did you ever speak to a Mr. Williams at the Technology Fund?

A Yes.

Q Did you speak to Mr. Williams and inquire whether the Piper shares held by Technology Fund were available for sale or not?

A As I recall my conversation or conversations with Mr. Williams, they had to do with Chris-Craft, which was a stock recommendation of mine at that time.

Q But you do not recall any conversations with Mr. Williams concerning the Piper shares?

A No.

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Q Do you know whether any other employee of Mitchell, Hutchins had any conversations with anyone at the Technology Funds, inquiring as to whether their shares were available for sale or not?

A I don't know directly, but in the course of any block order to buy, we have -- it is just procedural that you go to the owners of such shares that appear in Vickers and check and see if they have an interest in selling.

Q Did you do it?

A I did not do it.

Q Do you know whether any other employee of Mitchell, Hutchins went to Technology Funds to inquire as to whether their block was available?

MR. CROWELL: The question is: Do you know of any employee.

Q Do you know?

MR. CROWELL: You do not have to guess.

A I don't know for sure. I would assume that it was done.

Q Did you ever have any conversation with Mr. Siegel in which you indicated that you had contacted Technology Funds and ascertained that their block of Piper shares were not available for sale across the Exchange?

A I don't remember discussing that with Mr. Siegel.

Q Do you ever remember discussing that with anyone?

MR. CROWELL: Was your question "not available" or "now available"?

MR. RYAN: Not available.

A Would you repeat that question, please?

Q I will rephrase it.

Did you have any conversations with Mr. Siegel or with anyone concerning the fact that the Technology Funds were not willing to sell their block of Piper shares across the New York Stock Exchange?

MR. CROWELL: Do you understand the question?

THE WITNESS: Yes.

A I could have had a conversation like that.

Q Do you recall with whom?

A It would be with Mr. Siegel.

Q And what would be the basis for that conversation? How would that conversation have arisen?

A It would probably have arisen through the mechanism we have for ascertaining in our wire room whether or not blocks are for sale and they would try every large block that was known, public knowledge, and obviously, the answer was no.

Q Well, do you have any recollection at all of discussing this with Mr. Siegel?

A I believe I discussed with Mr. Siegel that through our wire room we checked the major holding of Piper as of just a matter of business.

Regarding arrangements for the meeting in New York between Mr. Hawkinson and representatives of Chris-Craft, Mr. Spencer testified at deposition, at pp. 28-30,

What conversation did you have with Mr. Siegel preceding making this arrangement for Mr. Hawkinson to visit? What did you say to Mr. Siegel and what did he say to you?

A There was an institutional investors convention in New York at that time. Mr. Hawkinson was attending; I was attending; Mr. Coleman was attending. We had recommended Chris-Craft to Technology Funds as a stock purchase. We thought that it would be a good time to introduce Mr. Hawkinson to the management of Chris-Craft.

My conversations would be with Mr. Siegel, just basically setting the appointment up.

Q Did you have any conversation with Mr. Siegel as to whether Technology Funds might be willing to discuss selling the Piper shares?

A Well, Mr. Siegel was aware that they owned it. I was aware that they owned it and --

Q But you do not recall any conversation with Mr. Siegel concerning this?

A I probably mentioned to him, "You might want to talk about that, but my purpose is to talk Chris-Craft."

Q Your primary purpose for introducing Mr. Hawkinson to Mr. Siegel was -- what is Mr. Hawkinson's position in Technology Funds?

A President.

Q And chief executive officer?

A Yes.

Q He was to talk over Chris-Craft's position with Mr. Siegel?

A Yes.

Q Did you read Mr. Hawkinson's deposition in this case?

A Yes.

Q When did you read it?

A Yesterday.

[Proposed by Bangor Punta and Piper]

433. Regarding the meeting in New York between Hawkinson and representatives of Chris-Craft, Hawkinson testified in part at deposition, pages 24-26:

BY MR. RYAN:

Q Do you recall how this appointment with the Chris-Craft officials was arranged?

A I believe it was arranged through Mr. Spencer of Mitchell Hutchins and probably through one of the Chicago Representatives of Mitchell Hutchins.

Q Do you recall whether you spoke to Mr. Spencer or some other Representative of Mitchell Hutchins concerning this meeting prior to the time of the meeting?

A I don't recall whether I spoke to them or whether my secretary spoke to them or whether a member of the Research Department spoke to them.

Q Do you recall how you first learned of the fact that the Chris-Craft officials may be interested in acquiring this Piper block?

A I did not know of their interest in acquiring the block until they disclosed the interest in the meeting.

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Q Do you mean you were unaware of their purpose of the meeting until you went to the meeting?

A That is correct.

Q What was the reason given for your visiting the Chris-Craft officials in New York?

A I was told by representatives or by members of our investment staff that the Chris-Craft situation was a potentially interesting one and that Mitchell Hutchins had excellent rapport with the management and that the management wanted to meet with me when I could arrange it at my convenience on any of my scheduled business trips to New York.

Q To discuss the possibility of your firm recommending investments in Chris-Craft? Was that the purpose of the meeting?

A I didn't know. That was my impression.

Q But you don't recall any information of anybody telling you prior to this meeting that there was going to be any discussion concerning the sale of this Piper block?

A I do not recall it.

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[Proposed by Bangor Punta and Piper]

434. On January 23, 1969, Chris-Craft announced a cash tender offer for up to 300,000 shares of Piper stock (with the right to accept more shares), offering $65 per share. This was Chris-Craft's first public announcement of its interest in Piper.

[Proposed by Bangor Punta and Piper]

436. Mr. Gordon testified at deposition that the possibility of Chris-Craft's making a cash tender offer was not discussed at the time of the market purchases of Piper stock, and that the cash tender offer was first discussed in a phone call he made in the morning from the Central Park Zoo to Mr. Siegel at his home, on the day of their first meeting with John Hawkinson, January 22.

Regarding this call Mr. Gordon testified at deposition on May 27, 1969, at pp. 83-86:

Q I take it that the consideration for making the cash tender offer was made before you met with Mr. Hawkinson?

A Yes.

Q What time of day was that?

A In the morning.

Q What time did you meet with Mr. Hawkinson?

A In the afternoon.

Q Whom did you meet with in the morning at which time this consideration was given to make the cash tender offer?

A It was a telephone call from me to Mr. Siegel.

Q Where were you at the time you made that call? I take it you were not in your office.

A No.

Q Your offices are located close together when you are both in your offices?

A We have the same office, but we weren't in our offices.

Q Where were you?

A I was in the Central Park zoo. Mr. Siegel was at his home.

Q Was that a week day?

A A week day.

Q You called Mr. Siegel?

A Yes.

Q Where was he, in his office?

A He was still at home.

Q Did you call him for the purpose of making a suggestion of a cash tender offer?

A Yes, sir.

Q What led you to make that suggestion?

A That we could save a lot of time, and we were at that time thinking about another company that we were

really planning to move after. We were negotiating with that company, and we were planning more in that direction, and not move in the direction of Piper.

I rather liked the Piper deal better.

* * *

Q What did Mr. Siegel say in response to your suggestion in the telephone call from the zoo?

A He listened to it, and said he would think about it.

Q When did you next discuss it with him?

A When I got back to the office.

Q Was there anyone else present at that discussion?

A It was still on the telephone.

Q What was said in that conversation?

A We discussed the advisability of making a cash tender offer if we were able to purchase the 100,000 share block from Technology Fund.

Q You had already discussed this. Had your discussion advanced at all in the second conversation?

A I argued that it would be highly advisable and desirable. Herb Siegel wanted to talk to some of the other directors.

Q Were any considerations discussed which might make it undesirable?

A Yes.

Q What were they?

A Questions of whether we might buy it for less money, buy the stock for less money, if we didn't tender. We might have an easier relationship with the Pipers if we didn't tender.

Q Who raised that consideration?

A I did, and I raised them both, I think.

Regarding the same phone call Mr. Siegel testified in part at deposition, at pp. 33-35:

Q When did you first discuss it with Mr. Gordon?

A Discussed the matter of the tender offer?

Q Yes.

A When we knew we were -- when we actually closed that -- I forget the name of the Fund --

Q Technology Fund?

A Yes. It used to be, I think, Electronics Fund. Wasn't it? And then it became Technology Fund?

Q Do you recall what date that was?

A The 22nd, 23rd, somewheres in there.

Q You say --

I will ask that the witness not look at it at this time.

MR. LIMAN: He does not want you to look at this.

Q Do you recall what day of the week it was when you first discussed the cash tender offer with Mr. Gordon?

A No, I don't recall which day.

Q You believe, as I understand, that it was the same day that the tender offer was filed or perhaps the day before?

A It might have been 24 hours, 48 hours, somewhere in there, but it was right at that time.

Q Do you recall where you were when the discussion first came up?

A He called me at my home. I was on the other phone.

Q Where was he?

A I think he told me he was at a zoo.

Q What did he say to you, and what did you say to him?

A He said to me we ought -- "I think we ought to make a tender offer."

And my first inclination was, no, I don't think that is the right move, and we would discuss it later when I got to the office.

He then proceeded to tell me what he thought it was a good idea.

Q What did he say?

A He said that he thought we could get, you know, a lot of stock in on a fast tender.

MR. PENNOYER: May I have that read back?

(Whereupon, the preceding answer was read by the reporter)

Q As I understand your answer, it was Mr. Gordon who called you from a zoo?

A Yes, because I don't have the number of the zoo.

Q It was Mr. Gordon who first made the suggestion that a cash tender offer be made?

A Yes.

[Proposed by Bangor Punta and Piper]

437. A Schedule 13-D regarding Chris-Craft's cash tender offer was filed with the SEC on January 23, 1969. Exhibit 1 to this Schedule was a copy the terms of the offer, dated January 23, 1969, which appeared as an advertisement in the Wall Street Journal on January 24, and 31, 1969.

Amendments 1 and 2, filed with the SEC, January 24, 1969, effected certain minor amendments in the terms of the cash tender offer. These amended terms, dated January 24, appeared as an advertisement in Barron's on January 27.

[Proposed by Bangor Punta and Piper]

438. The Schedule 13-D and the advertisements stated that Chris-Craft had acquired 200,500 shares of Piper. By the close of business on January 23, 1969, certificates for 164,400 shares of Piper had been delivered to Chris-Craft or its brokers, certificates for an additional 30,700 shares representing purchase transactions executed on January 8 by Mitchell Hutchins for Chris-Craft were in the state described in Finding 425, and purchase transactions representing an additional 8,600 shares of Piper had been executed on the New York Stock Exchange on behalf of Chris-Craft.

By the close of business on January 24, certificates for 196,000 shares of Piper had been delivered for 196,000 shares of Piper had been delivered to Chris-Craft or its brokers, and purchase transactions representing an additional 23,900 shares had been executed on the New York Stock Exchange.

[Proposed by Bangor Punta and Piper]

439. Amendment 3 to the Schedule 13-D, dated and filed with the SEC January 27, transmitted the text of the terms of the cash tender offer in "definitive form," that is, incorporating the amendments of January 24.

[Proposed by Bangor Punta and Piper]

440. The Schedule 13-D and the advertisements referred to in Finding 437 stated,

Funds required by Chris-Craft to purchase shares of Piper Common Stock tendered pursuant to this Offer are estimated to be approximately $19,800,000, if 300,000 shares are purchased. In making such purchase, Chris-Craft proposes to use its general funds. In December 1968 Chris-Craft obtained approximately $25,500,000 from a public underwritten subscription offering of its 6% Convertible Subordinated Debentures Due 1989. To the extent additional funds are required, Chris-Craft proposes to borrow from banks on a short-term basis. Arrangements for such borrowings have not yet been made.

The first reference to a loan from the PNB was made in Amendment 4 to the 13-D Statement, dated and filed with the SEC on February 10, which stated in relevant part,

On February 3, 1969, Chris-Craft Industries, Inc. borrowed from Philadelphia National Bank $15,000,000 for the purpose of financing the shares of Piper Aircraft Corporation Common Stock tendered pursuant to Chris-Craft's January 24, 1969, offer. Under the terms of the Note signed by Chris-Craft, said $15,000,000 must be repaid on demand.

[Proposed by Bangor Punta and Piper]

441. The statement entitled "funds available" and the cash flow sheet, prepared on January 24, 1969 and annexed to Finding 355, state that at that time Chris-Craft had $14,000,000 available in cash (including the remaining proceeds of the debenture sale) and that $1,600,000 had been spent on purchases of Piper on January 23 and 24. In determining the "total funds available," the statement of funds available includes $10,000,000 described as "Committment from PNB."

[Proposed by Bangor Punta and Piper]

442. Chris-Craft stated in its tender offer that it might make market purchases of Piper during the offer. Total market purchases of Piper from January 23 through February 3 cost Chris-Craft $2,4

[Proposed by Bangor Punta and Piper]

444. Amendment 5 to the Schedule 13-D, stating that Chris-Craft had acquired an additional 9,190 shares of Piper on the open market since February 10, was dated and filed with the SEC on April 8, 1969.

[Proposed by Bangor Punta and Piper]

446. On January 24, 1969, Chris-Craft issued instructions to Goldman, Sachs & Co., which executed orders on the New York Stock Exchange for the purchase of 16,200 shares of Piper at 62-1/2 for Chris-Craft. On January 24, Park Avenue Funding Co., N.V. (a Hartwell account) exercised 8,000 of its call options on Piper stock, and issued instructions to its broker which executed orders on the New York Stock Exchange for the sale of 8,000 shares of Piper for Park Avenue Funding at 62 1/2.

[Proposed by Bangor Punta and Piper]

447. Mr. Siegel is a personal friend of L. Jay Tannenbaum, a general partner of Goldman, Sachs & Co. Mr. Siegel understood him to be its head of arbitrage.

[Proposed by Bangor Punta and Piper]

448. On January 27, 28 and 30 and February 3, Chris-Craft issued instructions to various brokers, which executed transactions on the New York Stock Exchange for the purchase of 22,600 shares of Piper for Chris-Craft. Goldman, Sachs & Co. acted as the broker for 17,400 of these shares. Wood Struthers, W.E. Hutton, and Goodbody & Co. acted as the brokers for the balance of the shares. From January 24 through February 3, purchase transactions executed by brokers for Chris-Craft on the New York Stock Exchange totalled 38,800 shares of Piper, representing approximately 40% of the 97,500 Piper shares traded on the New York Stock Exchange during this period.

[Proposed by Bangor Punta and Piper]

449. Chris-Craft's cash tender offer was open from January 23 through February 3, 1969. 304,606 shares were tendered to and purchased by Chris-Craft thereunder.

December 23, 1970

[Proposed by Bangor Punta and Piper]

451. American Investors Fund ("AIF") tendered its entire position of 26,700 shares of Piper to Chris-Craft pursuant to the cash tender offer.

[Proposed by Bangor Punta and Piper]

452. In the fall of 1968, AIF had decided to sell its block of 30,000 shares of Piper stock, purchased in June 1968, in market transactions. Between October 28 and November 12 it sold 2,200 shares. It made no sales of Piper between November 13 and January 16, 1969. Between January 16 and January 21 AIF sold 1,100 Piper shares on the market.

[Proposed by Bangor Punta and Piper]

453. Chestnutt, President of AIF, testified at deposition, pp. 21 and 23-25,

Q Do you recall hearing any rumors or gossip in the market that something was going on with Piper in late December of 1968?

A At some time I did begin to hear some rumors about that Chris-Craft was looking at them, and to fix the date would be impossible at this time. I know that eventually we received a tender offer and accepted it, but when we first heard of a rumor, I just couldn't pin down at all.

* * *

A Yes, I was looking at the stock once every week and probably oftener than that, and I must have seen the volume if it was excessive.

Q Do you recall if you made any inquiry of anybody outside your firm concerning who was doing the buying in the Piper stock?

A No. Maybe I was more impressed by the selling, in view of the fact that we were selling the stock. It seems likely that we thought the seller was more important than the buyer. Ordinarily, if we thought a buyer was more important, we would have stopped selling and we didn't, because we were still selling.

Q You didn't sell again until January 16th. Between the 16th and 21st you sold 1,000 shares.

A Apparently we were not impressed by the buyer, if we did find out anything.

Q Do you have any recollection if you inquired of any member of your staff to investigate?

A I can remember -- but the only thing is I don't remember the time, whether before or after this period you are talking about -- but I can remember there being a story that Chris-Craft was a potential buyer of stock and, as I recall, it was sort of off and on, and the story can very well have come through that the deal was off. I don't remember why we resumed selling right now. It doesn't -- it never got on the front burner, as far as I was concerned. It was never a major topic of conversation until the tender offer was made.

Q Do you recall who it was that told you that Chris-Craft was interested in the Piper stock?

A I think Mr. Greene told me. It may not have been he; it might have been one of the other people in our office. I don't believe I heard it from outside the office.

Q You don't recall learning from whom your representative or your firm's representative first learned of Chris-Craft's interest?

A No.

Q Do you recall when you first learned of the Chris-Craft tender offer, which took place in January of 1969?

A I know that it would not have been prior to January 21st, because we were still selling the stock then, and we certainly would not have sold it at 51-7/8 if we knew there was a tender offer at 65. It had to be between January 21st and the time we tendered the stock. Probably a week or ten days before February 3rd, I suppose.

Q Do you recall the circumstances which caused your resumption on January 16, 1969 of your sales of the Piper securities?

A I don't recall why we resumed selling. It was probably the same reason we were selling before, and we stopped for awhile and then gave up waiting and got tired waiting, and the stock was doing nothing, so we started selling again, so far as I recall.

Q Do you recall what you had in mind when you were waiting? What were you waiting for?

A I suppose we had heard these rumors about Chris-Craft. I am not sure. I do know that, sometime before, I had heard there was a potential sell-out.

December 23, 1970

[Proposed by Bangor Punta and Piper]

454. United Accumulative Fund, Ltd., of Toronto tendered 26,250 shares of Piper to Chris-Craft pursuant to Chris-Craft's tender offer. With respect to this transaction, Muriel Siebert testified at deposition, p. 43,

Q Do you know whether or not any of your clients accepted Chris-Craft's tender offer?

A Sure, United Fund in Toronto did.

Q Did you receive any compensation in connection with their --

A Yes; I think so. I think $5,000.

Q Would you have any record that would reflect that?

A I don't think we mark our receipts. That was during the time of the give-ups.

Q Yes.

A And I don't believe that we recorded where it came from.

[Proposed by Bangor Punta and Piper]

455. Accounts managed by Hartwell tendered 19,400 shares of Piper to Chris-Craft pursuant to the tender offer, including 11,500 shares held by the Hartwell accounts that had purchased Piper stock on December 10, 1968, as set forth in Finding 387. Records produced by Hartwell of certain accounts which held Piper stock in January, 1969, show that these accounts held no Piper stock after February 3, 1969 through September 1, 1969, except for 1,500 call options held by Park Avenue Funding Co., N.V.

[Proposed by Bangor Punta and Piper]

456. Thirty-seven custody accounts managed by Chase held a total of 21,030 shares of Piper stock on January 23, 1969. Thirty-two of these accounts tendered a total of 15,530 shares to Chris-Craft pursuant to its tender offer.

[Proposed by Bangor Punta and Piper]

458. Between January 23 and February 18 Tech Fund placed a number of buy orders for Chris-Craft securities with Mitchell Hutchins, who acted as Tech Fund's broker for all purchases of Chris-Craft securities.

[Proposed by Bangor Punta and Piper]

459. Mr. Williams testified at deposition, at pp. 135-136,

Q Did you have any conversations with anyone in your company suggesting that Mitchell-Hutchins should be given the order in consideration of their having brought Chris-Craft to you as a customer for the Piper block?

A I don't recall.

Q You have no recollection of that?

A No, I don't have any recollection of that.

Q Ever recall discussing with Mr. Hawkinson the fact that Mitchell-Hutchins had done you people a good deed by bringing Chris-Craft to your attention?

A I don't recall.

Q You don't recall that.

You don't recall Mr. Hawkinson mentioning that to you?

A I don't recall.

Q Do you recall any conversation you had with members of your Trading Department suggesting that Mitchell-Hutchins be given this order in light of

the fact that they had brought Chris-Craft to you as a customer, or that consideration at least be given to that?

A I don't recall.

Q Wouldn't that have been your function, Mr. Williams, as a member of the Investment Committee and as someone who dealt with Mitchell-Hutchins people, to throw some business their way in consideration of their good turn?

A Could have been.

Q Wasn't it in fact?

A Yes.

[Proposed by Bangor Punta and Piper]

460. Tech Fund bought Chris-Craft common stock in amounts ranging from 2,000 shares (on January 31) to 7,300 shares (on January 24), on eleven of the eighteen trading days from January 23 to February 18. Tech Fund bought Chris-Craft $1.40 preferred stock, in amounts ranging from 100 shares (on February 24) to 2,500 shares (on February 19), on ten of the fourteen trading days from February 4 to February 25. Tech Fund paid from 49.024 to 54.444 per share of common stock and 47.674 to 53.610 per share of $1.40 preferred stock (including commissions).

[Proposed by Bangor Punta and Piper]

461. Two investment companies managed by IDS, Investors Mutual Fund, Inc. (Investors Mutual) (one of the holders of Chris-Craft's 5-3/4% Notes referred to in finding 361A) and Investors Stock Fund, Inc. (Investors Stock), began purchasing Chris-Craft's common stock and $1.40 preferred stock on January 14, 1969.

[Proposed by Bangor Punta and Piper]

462. Wesley Wadman (a Minnesota resident), who in 1969 was the portfolio manager of a portion of Investors Mutual, recommended its purchase of Chris-Craft securities in January 1969. He had a long association with the management of Chris-Craft, predating Mr. Siegel's association with Chris-Craft.

Mr. Wadman testified at deposition, at p. 14,

I have met Mr. Siegel on several occasions and a gentleman by the name of Len Gordon. Those are the two primary contacts. I have met several others in the organization. I guess there is a Mr. ~~Rockless~~ Nocklis there and a Mr. Hopkins on the West Coast.

Mr. Wadman met with Mr. Siegel on October 30, 1968. At deposition, Mr. Wadman did not recall the substance of the meeting.

[Proposed by Bangor Punta and Piper]

463. Mr. Wadman testified at deposition, at pp. 17-19,

Q Are you acquainted with any of the personnel at Mitchell Hutchins Company?

A Yes, I am.

Q With whom are you acquainted?

A With specific reference to Chris-Craft it would be Roger Spencer, and other members of the firm, also.

Q Do you know Mr. Coleman in the Chicago office?

A No, that name doesn't ring a bell.

Q Do you know Mr. Cooney?

A I know Mr. Cooney, yes. He covers our account.

Q Do you know Mr. David Ralph?

A The name doesn't ring a bell.

Q Do you know Mr. Burns?

A No. I have met several members of Mitchell Hutchins at various times in visits to their office. Their names I do not recall. The ones I deal with, basically are Mr. Cooney, who covers our account and Roger Spencer of Chris-Craft.

Q Do you recall having any conversations with Mr. Spencer about Chris-Craft?

A Yes, I know I have had conversations with him.

Q Do you recall the first time you had such conversation with Mr. Spencer?

A No, I don't.

Q Would it have been after the merger with Baldwin-Montrose and Chris-Craft?

A I would guess it was but I couldn't swear to that.

Q Do you recall having any conversations with Mr. Spencer at or about the time that you saw the debenture prospectus?

A I suspect I did because I was listening to Mr. Spencer approximately at this time because he was recommending the stock, if I recall correctly.

Q Do you recall anything that he said in connection with recommending the stock?

A No, just a general recollection that he liked the stock, obviously.

Q Do you recall Mr. Spencer advising you that he had learned that Chris-Craft had considered selling the Chris-Craft Division?

A No, not specifically.

Q Do you recall Mr. Spencer telling you that Chris-Craft intended to expand its business primarily by means of acquisitions?

A He may have. Whether he told me or whether that was conclusion I came to myself, based on discussions with management, I don't know.

Mr. Spencer testified at deposition that the IDS funds had purchased Chris-Craft securities on his recommendation.

991 A

[Proposed by Bangor Punta and Piper]

464. On or before January 3, 1969, Mr. Wadman decided to recommend that Investors Mutual and Investors Stock purchase Chris-Craft securities. He made such recommendation in writing, dated January 3. Mr. Wadman testified at deposition, pp. 90-91,

Q Do you recall any conversations with anyone at or about this time where it was suggested that purchase of Chris-Craft securities should be accomplished quickly?

A No. I think this may have been a conclusion of my own, possibly, based on the fact that they had 36 million dollars on hand.

Q Do you know when Chris-Craft acquired the major portion of that 36 million dollars?

A The major portion came, I believe, through the debenture offering.

Q Do you know when Chris-Craft obtained the proceeds of its debenture?

A No, I don't.

Q Did you know at that time?

A To the best of my knowledge, no. You are referring to the exact date that they had the cash in hand, so to speak?

Q Yes.

A No.

Q If I tell you that the proceeds were available to Chris-Craft on December 30th or December 31st, does that refresh your recollection as to any conversations you may have had?

A I may have been aware of it at that time.

Q But you don't recall that anyone told you at or about that time that Chris-Craft was contemplating any major acquisitions?

A No. I assumed they were.

Q You assumed they were?

A Well, as I say, my premise for investing was a combination of one, that they were going to expand in the leisure time field and two, they now had 36 million dollars with which to do it. It was a very logical assumption, from my standpoint.

Mr. Wadman's written evaluation dated January 5, 1969 stated in part,

> At $41 3/4, Chris-Craft is selling at approximately 21 times our estimated earnings of $2.00 (fully diluted) for the fiscal year ending August 31, 1969.

His further written comment with regard to Chris-Craft securities, dated January 10, 1969, stated in part,

> Selling at approximately 20 times our 1969 estimate of $2.00 of fully diluted earnings from existing operations, we believe that Chris-Craft at the current price of $39 1/4 offers an attractive opportunity to participate in the growing business of leisure time. Purchase is recommended.

December 29, 1970

[Proposed by Bangor Punta and Piper]

465. Investors Mutual and Investors Stock purchased an aggregate of 28,300 shares of Chris-Craft common on the New York and Pacific Coast stock exchanges between January 14 and January 23, 1969. They bought a total of 53,900 shares of common on the New York Stock Exchange in transactions on (or dated as of) January 23 and 24, represented 53% of the 102,300 shares traded on the New York Stock Exchange on these two days. By January 31 the two funds had purchased 94,600 shares of Chris-Craft common stock and 25,700 shares of Chris-Craft $1.40 preferred stock. The prices paid ranged from 40-1/4 to 54. The two funds paid a total of $6,034,774.68. Mitchell Hutchins acted as broker for both funds on all these purchases.

[Proposed by Bangor Punta and Piper]

466. On January 27 (in a transaction dated as of January 23) the Progressive Fund, also managed by IDS, bought 9,000 shares of Chris-Craft common at 54 through Mitchell Hutchins, for a total cost (including commissions) of $488,844.60.

[Proposed by Bangor Punta and Piper]

467. Two investment companies managed by Keystone, Polaris Fund and Keystone Low Priced Common Stock (S-4) Fund, began buying Chris-Craft common stock on January 20, 1969. By the close of February 27th, the two funds had purchased a total of 86,700 shares at prices ranging from 44-1/4 to 55-3/4 for a total consideration of $4,479,590.91.

[Proposed by Bangor Punta and Piper]

468. David Greene (a Massachusetts resident), the manager of the Polaris Fund, recommended in writing on January 16, 1969 that Polaris purchase Chris-Craft securities. His reasons were,

On the basis of general demographics and the affluency of our society it is quite obvious that the amusement and leisure time areas should realize unusual growth over the years to come. Chris Craft is one of the major companies in the boating area and should benefit fully. The company is attempting to create a pure leisure time entity out of its present business and all of its nonrecreational operations will be sold. In order to further its objectives the company has available to it well over $40 million in cash. I believe that the estimates shown in the research department comments are conservative and it is conceivable that they will be at least 15% better than those stated. There is little doubt in my mind that the market will begin to notice the potentials of recreational type companies over the very near future and therefore multiple expansion in these issues is an excellent expectation. Purchase.

Mr. Greene testified at deposition that prior to January 16, 1969, he probably had conversations with a person or persons at Mitchell Hutchins. He further testified, at p. 30,

Q Do you regularly talk with people at Mitchell Hutchins?

A I used to speak to one individual at Mitchell Hutchins.

Q Who did you speak to?

A I can't recall his name. It will come to me. Dave Ralff.

Q Mr. Ralff?

A Yes, R-a-l-f-f.

[Proposed by Bangor Punta and Piper]

469. With regard to the purchase recommendation quoted in Finding 368, Mr. Greene testified at deposition, at p. 9,

Q Do you recall how that came about that that document was prepared?

A The document is just a corollary of Mr. Buneman's recommendation and is generally a situation where I agreed with the Analyst and therefore it is included or added to the Fund at that time.

The same purchase recommendation contains, under the heading "Research Department Comments," the following analysis of Chris-Craft, prepared by Tim Bueneman, a Keystone research analyst:

Chris Craft, the largest manufacturer of pleasure boats (motorboats, sailboats, houseboats etc.) is recommended for addition to Polaris. Attraction lies in the following:

1) The company is demonstrating a change in corporate philosophy. The company is selling its non-recreation-oriented operations (chemicals, auto carpets, etc.) and redirecting its efforts totally toward the leisure field.

2) The vehicle will be acquisitions. The financial strength is unquestioned: With $40 million in cash (and $19 million coming from the sale of the chemical division), Chris Craft represents $42 per common share in cash (current price is $43). A recent prospectus stated that the funds received from the underwriting would be used "in connection with further acquisitions. . ." Management has explicitly mentioned the following areas of interest: motion pictures, TV stations, hotels, marinas, and boating.

3) Substantial turnaround potential exists in the boat division. This division has been plagued by low margins (3% after taxes last year) and production delays. Management announced yesterday the appointment of two former GM executives to head this division (both are production experts). The Company believes the division's sales this year will increase to $60 million (from $49 million)--and that margins "should increase to 5%".

4) Although the Company may trade on a "concept" basis, earnings should improve substantially this year. Estimates for the current fiscal year (8/69) range from $2.30 ($1.70 fully diluted) to $3.00 ($2.30 fully diluted). If management attains divisic sales and margin targets, it is conceivable that the Company could earn $3.50-$3.70. In view of this potential--and the good first quarter ($.73 vs.$.51)--I would be inclined to agree with the higher estimate. (Estimates assume no acquisition).

Chris Craft is strongly recommended to Polaris for participation in the projected growth in leisure time and disposable income.

The same comments of Mr. Bueneman are appended to the written recommendation that the S-4 Fund purchase Chris-Craft securities.

Mr. Greene testified at deposition, at pp. 12-14,

Q (By Mr. Barrett) I direct your attention to the paragraph, Reason for Addition, which you signed, which contains the sentence, "In order to further its objectives the company --that's Chris Craft-- has available to it well over $40-million in cash." Do you recall writing that statment, Mr. Greene?

A. I don't recall writing it. However, obviously I wrote it.

Q Do you recall the source of your information?

A. Yes. Mr. Buneman, most likely.

Q Do you recall whether the source of this information may have been some published record Mr. Buneman had seen? Did he show you any such thing?

A. I don't recall.

Q. You don't recall? Would it have been a part of Mr. Buneman's duties to contact the officals of a company which you were considering making an investment in?

A. Yes, it would be.

Q. And would it have been possible that he contacted Chris Craft during this period?

A. I would think so ---

MR. AUSPITZ: Objection.

MR. BARRETT: What's the ground of your objection?

MR. AUSPITZ: Speculation on the part of this Witness.

Q. (By Mr. Barrett) But it was part of his duties to make such an investigation prior to coming to a recommendation, coming to you with a recommendation?

A. Yes. Well, let's put it this way, that one would generally have contact with the management of the company whose issues we were considering as a purchase.

MR. MOORE: May I interrupt a minute? I'd like to ask a question.

Would you not also, however, buy a security recommended by an analyst even though he had not talked to management?

WITNESS GREENE: Yes. But only in this case, obviously, there would be another prerequisite that would come into play, that I may know management myself or someone who I may know knows management, and therefore I have some, I can make a value judgment as far as management is concerned.

Q (By Mr. Barrett) Was that the case, Mr. Greene, in this particular case?

A As I told you, I can't remember.

Q Do you remember that Mr. Buneman did not have any contact with Chris Craft?

A I don't recall.

[Proposed by Bangor Punta and Piper]

470. Mr. Greene's same purchase recommendation, quoted in Finding 368, in accordance with Keystone's internal procedures, was approved by Keystone's Executive Committee. The date "1/19/69" is written after the signatures of two of the three Committee members signing the recommendation, G.H. Ellis and W. Godfrey. January 19, 1969 was a Sunday.

[Proposed by Bangor Punta and Piper]

472. American Investors Fund purchased 22,500 shares of Chris-Craft common stock and $78,000 principal amount of Chris-Craft's 6% convertible debentures on the New York Stock Exchange between February 7 and February 13, 1969. American Investors Fund decided to invest in Chris-Craft because of the price performance of the stock. In the period January 14 through February 7, 1969, three institutional investors had purchased Chris-Craft securities as set forth in Findings 458 through 471 and 475. American Investors Fund's computer rated Chris-Craft stock as one of the strongest stocks around at the time it was purchased.

January 22, 1971

[Proposed by Bangor Punta and Piper]

473. From November 1, 1968 through January 13, 1969 ("the earlier period"), Chris-Craft common stock prices on the New York Stock Exchange ranged from 35 to 41-3/4. The average daily volume was 7,490 shares. The average closing price was $38.92. Daily volume exceeded 10,000 shares on eight of forty-three trading days. During the same earlier period, Chris-Craft $1.40 convertible preferred stock prices on the New York Stock Exchange ranged from 34-1/8 to 40-3/4. The average daily volume was 1,350 shares. The average closing price was $37.16. Daily volume exceeded 2,900 shares once.

[Proposed by Bangor Punta and Piper]

474. From January 14 through February 14 ("the later period"), Chris-Craft common stock prices on the New York Stock Exchange ranged between 39-7/8 and 58-1/4. On February 11, the stock reached a high of 58-1/4, 49.7% over the average closing price for the earlier period. Average volume during the later period was 23,400 shares, three times the average daily volume for the earlier period. Daily volume during the later period exceeded 10,000 shares on eighteen of the twenty-three trading days. During this same later period, Chris-Craft $1.40 convertible preferred stock prices on the New York Stock Exchange ranged between 40 and 58. On February 11 the stock rose to a high of 58, or 56.1% over the average closing price for the earlier period. Average daily volume was 3,130 shares during the later period, or two and one-third times that of the earlier period. Daily volume exceeded 2,900 shares on ten of the twenty-three trading days.

January 22, 1971

[Proposed by Bangor Punta and Piper]

475. As the following table shows, purchases of Chris-Craft securities by institutional investors as set forth in Findings 458 through 472 constituted 43.1% of total New York Stock Exchange trading in Chris-Craft common and 41.2% of $1.40 convertible preferred during the later period, when prices and volume increased as set forth in Finding 474. The percentage of such fund purchases on individual days during the later period was as high as 93.5% for the common and 100% for the $1.40 convertible preferred stock.

December 7, 1970

Table showing daily and total amounts of purchases of Chris-Craft Securities by American Investors Fund, Technology Fund, Investors Diversified Services and Keystone Funds over the New York Stock Exchange. Sources for the purchases are the internal records of the respective institutions, and confirmation slips of Mitchell, Hutchins & Co., Inc. for Technology Fund and Investors Diversified Services.

[Note: The Chris-Craft common stock is also traded on the Pacific Coast Stock Exchange. Purchases totalling 13,200 shares, known to have been made on that exchange by Technology Fund and Investors Diversified Services, have been excluded.]

	COMMON				$1.40 PREFERRED			
1969	Amount of Fund Purchases	Volume* NYSE	%	Closing* Price	Amount of Fund Purchases	Volume* NYSE	%	Closing* Price
Jan. 13	-0-	9,700	-0-	40	-0-	1,000	-0-	39
Jan. 14	IDS 1,500	8,500	17.6	41 1/2	-0-	2,000	-0-	40
Jan. 15	-0-	38,600	-0-	43 7/8	-0-	2,400	-0-	42 5/8
Jan. 16	IDS 14,300	34,100	41.9	44 7/8	IDS 4,400	4,700	93.6	44 1/2
Jan. 17	IDS 2,800	8,300	33.7	44 5/8	IDS 2,600	2,500	100 + **	44 1/4
Jan. 20	IDS 6,700 KF 4,800 11,500	24,400	47.1	48 1/2	IDS 1,500	5,300	28.3	47
Jan. 21	-0-	78,100	-0-	49 7/8	-0-	4,400	-0-	48 3/4
Jan. 22	-0-	12,000	-0-	48 3/8	-0-	3,300	-0-	47 3/4
Jan. 23	IDS 37,900 TF 6,400 44,300	61,500	72.0	51 1/2	IDS 5,200	6,300	82.5	50 1/2
Jan. 24	IDS 16,000 TF 7,300 23,300	40,800	57.1	51 5/8	IDS 3,100	6,400	48.4	50 3/4
Jan. 27	IDS 3,500 TF 2,700 6,200	14,100	44.0	51 3/4	IDS 2,300	4,800	47.9	50 7/8
Jan. 28	IDS 5,000 KF 9,900 TF 4,800 19,700	28,300	69.6	52 1/2	IDS 3,400	6,300	54.0	52

* As reported by The Wall Street Journal and Francis Emory Fitch Incorporated.

** The available records show IDS purchasing 100 more shares than were traded.

1969	COMMON				$1.40 PREFERRED			
	Amount of Fund Purchases	Volume* NYSE	%	Closing* Price	Amount of Fund Purchases	Volume* NYSE	%	Closing* Price
Jan. 29	IDS 5,600 KF 8,300 TF 2,400 16,300	19,700	82.7	51 7/8	IDS 1,200	2,100	57.1	50 7/8
Jan. 30	IDS 2,700 KF 13,000 15,700	16,800	93.5	50	IDS 2,000	5,100	39.2	48 1/2
Jan. 31	KF 5,700 TF 2,000 7,700	8,700	88.5	48 5/8	-0-	2,500	-0-	47 3/4
Feb. 3	KF 3,200	5,200	61.5	47 7/8	-0-	1,000	-0-	47 1/8
Feb. 4	KF 2,900 TF 2,100 5,000	10,300	48.5	51	TF 900	1,000	90.0	50 1/4
Feb. 5	TF 2,300	10,400	22.1	52 3/8	TF 1,400	4,200	33.3	52
Feb. 6	KF 11,800	20,300	58.1	53 7/8	TF 500	2,900	17.2	52 3/4
Feb. 7	KF 15,000 AIF 1,200 16,200	34,400	45.8	55 1/2	-0-	1,500	-0-	54 1/2
Feb. 10	No Trading	-0-				-0-		
Feb. 11	-0-	22,400	-0-	56 3/8	-0-	1,600	-0-	55 3/8
Feb. 12	AIF 12,300	17,000	72.4	54 7/8	-0-	200	-0-	53 3/4
Feb. 13	TF 5,300 AIF 9,000 14,300	18,600	76.9	54 1/4	TF 1,200	1,200	100	53 1/2
Feb. 14	TF 3,400	5,300	64.1	54 3/8	-0-	400	-0-	53 1/2
Jan. 14 through Feb. 14 TOTAL	231,800	537,800	43.1		29,700	72,100	41.2	

* As reported by The Wall Street Journal and Francis Emory Fitch Incorporated.

[Proposed by Bangor Punta and Piper]

476. The purchases of Chris-Craft common stock by four institutional investors between January 14 and February 14, shown on the preceeding table, totaled 231,800 shares, or 17% of Chris-Craft's outstanding common stock (1,355,857 shares).

[Proposed by Bangor Punta and Piper]

480. The record date for Piper's 1969 annual meeting was January 3, 1969. Chris-Craft obtained proxies to vote some of the shares it purchased pursuant to its cash tender offer, all the shares purchased from Technology Fund, and some of the shares purchased on the market through Account 100.

[Proposed by Bangor Punta and Piper]

481. Chris-Craft sought and obtained proxies in order to be able, by cumulative voting, to elect as many representatives as possible to the Piper board of directors at the Piper annual meeting, convened on February 4, 1969.

[Proposed by Bangor Punta and Piper]

482. Not later than February 7, 1969, Chris-Craft began preparation of the necessary documents for an exchange offer of its securities for Piper common stock.

[Proposed by Bangor Punta and Piper]

483. The minutes of a meeting of the Board of Directors of Chris-Craft held February 7, 1969 contain the following:

> "A discussion was held on the desirability of an exchange offer to the holders of the common stock of Piper Aircraft Corporation for additional shares of such stock in exchange for a series of Preferred Stock and Warrants of this Corporation. After a full discussion, it was determined that the action of Vice-President, C. Leonard Gordon in commencing the preparation of appropriate documents for such an exchange offer be approved but it was the consensus that no definitive action be taken at this time."

[Proposed by Bangor Punta and Piper]

484. On February 14, 1969, the Board of Directors of Chris-Craft declared the advisability of making an exchange offer for Piper common stock of a new series of preferred stock and warrants to purchase common stock, the dates, terms, provisions and conditions to be determined thereafter by the Board. Mr. Siegel was given the authority to not proceed with the exchange offer, or to accept over 300,000 shares of Piper if more than that number were tendered. The Chris-Craft Board also authorized the filing of an appropriate registration statement with the SEC. The registration statement and preliminary prospectus for the exchange offer were filed with the SEC on February 27, 1969.

[Proposed by Bangor Punta and Piper]

485. On May 12, 1969, the Chris-Craft Board of Directors passed the following resolution:

> RESOLVED, that all action taken by or on behalf of this Corporation by any officer or agent thereof in connection with the Exchange Offer including, but without limitation, purchases of Piper Common Stock totaling 556,206 shares thereof of which 304,606 shares were purchased pursuant to a cash offer to holders of Piper Common Stock at $65 per share net and 101,100 shares were acquired in a negotiated transaction at $65 per share and 150,500 shares were acquired in the open market be, and are hereby approved, ratified and confirmed as the act of this Corporation.

January 4, 1971

[Proposed by Bangor Punta and Piper]

487. The record of Mr. Siegel's telephone calls shows that during February, March and April, 1969 he had conversations with Roger Spencer on February 3 and 5, March 5, 11 and 24, and April 11, 2[illegible] and 30; with Edward Burns on February 7, March 10, 18, 19 and 21, and April 24; and with Mitchell Hutchins on March 24 and 25. Mr. Siegel met with Roger Spencer on April 11.

[Proposed by Bangor Punta and Piper]

488. Between March 18 and April 1, 1969, Chris-Craft issued instructions to Mitchell Hutchins, which executed orders for the purchase of on the New York Stock Exchange a total of 9100 shares of Piper common stock for Account 100, for a total cost of $648,357.26. Chris-Craft thereafter paid for this stock and received delivery of the certificates therefor.

[Proposed by Bangor Punta and Piper]

489. Chris-Craft had outstanding orders to purchase Piper stock until April 7, 1969.

January 5, 1971

[Proposed by Bangor Punta and Piper]

490. At the meeting with representatives of the SEC on April 7, 1969, described in Chris-Craft finding 82, Mr. Siegel advised the staff of the SEC that Chris-Craft would cancel its outstanding orders to purchase Piper stock through brokers.

January 22, 1971

[Proposed by Bangor Punta and Piper]

491. On April 7, immediately following the meeting with the SEC, Mr. Siegel ordered Mitchell Hutchins to cancel Chris-Craft's outstanding order to purchase Piper stock.

[Proposed by Bangor Punta and Piper]

492. Wesley Wadman of IDS telephoned Herbert Siegel on April 8, 1969. Mr. Siegel told him some of what had transpired at the meeting with the SEC, including the fact that the SEC had warned Chris-Craft not to make any further purchases of Piper during the pendency of its exchange offer. Wadman's notes of telephone conversations contain the following:

"Roger Spencer/Mitchell Hutchins 4/8

Chris-Craft
Regn out 4/12
2.50-3.00 Est prediluted - may cut slightly.

"Herb Siegel/Chr-Craft

meeting at SEC - SEC will get tough
with both sides - Siegel thinks he will
win - Piper action 'unheard' of - = fraud."

[Proposed by Bangor Punta and Piper]

493. Mr. Wadman's notes indicate that on April 8 and 14, 1969 he and Roger Spencer discussed by telephone Chris-Craft's pending exchange offer for Piper, and the SEC in connection with Piper.

[Proposed by Bangor Punta and Piper]

494. Thomas Williams of S.I.S. and Tech Fund learned that the SEC had ordered Chris-Craft to cease its market purchases of Piper. He testified at deposition that he had no recollection of when he learned this.

[Proposed by Bangor Punta and Piper]

495. Mr. Williams testified at deposition, at pp. 275-277, regarding a conversation with Roger Spencer,

Q Do you recall telling Mr. Hawkinson that you had received information which led you to believe or to calculate that the Chris-Craft was going to make an additional tender or exchange offer and that this had been confirmed by Mitchell-Hutchins?

A I do recall some conversation, I don't recall when, but there were conversations that -- yes, I do recall something about that. I do recall some conversations. I don't know. I can't pinpoint the time, and I mean within a wide range of time.

Q Yes.

A That there was a conversation with Mitchell-Hutchins, specifically Roger Spencer, that

there would be an offer by Chris-Craft in the $85.00 end.

Q Yes?

A And again this covers a wide time frame here. I don't recall when that was, but there was a subsequent Chris-Craft offer that didn't come close to that.

Q Do you recall asking Mr. Spencer what the basis of that information was?

A No.

Q Were you curious as to how Mr. Spencer knew that Chris-Craft was going to be making such an offer?

A Yes.

Q Wouldn't it have been important for you to know the basis of that before acting on that information?

A Well, I didn't think Mr. Spencer dreamed it up.

Q I understand that. Wouldn't it have been important for you to know the basis of that information before acting on that?

A I suppose so. Yes.

Q Does that refresh your recollection that you asked him what the basis of that information

was?

A No, sir.

Q Was it your understanding that Mr. Spencer had that information based upon conversations or discussions he had with people at Chris-Craft?

A That was certainly an implied -- that was certainly an implied recommendation, at least.

Q And that was your understanding?

A Yes, sir.

Q And you acted upon that?

A Yes, sir.

[Proposed by Bangor Puhta and Piper]

496. On April 17 and 18, S.I.S. directed its traders to buy for two of its funds, Supervised Investors Growth Fund ("Growth") and Supervised Investors Summit Fund ("Summit"), 20,000 and 8,000 shares of Piper respectively at not more than $70 per share.

January 22, 1971

[Proposed by Bangor Punta and Piper]

497. Regarding the decision to purchase Piper, Mr. Williams testified at deposition, at pp. 253-256 and 262-264,

A It was an arbitrage situation, I believe, if I remember properly. Piper was selling at a discount, a fairly substantial discount to, I believe, it was to cash offer by Piper, I mean by Chris-Craft, and as I recall the situation we were capitalizing on the arbitrages that existed.

Q Did you have any discussions with anyone at Christ-Craft at that time relating to the price of Piper stock?

A Not that I recall.

1030A

Q How were you aware of the price that Chris-Craft was purchasing Piper stock at?

A I don't recall specifically.

Q But you do recall specifically that it was selling at a discount?

A No, I don't even specifically recall that.

Q What is your testimony now?

A Either -- either we thought there would be a subsequent offer or there was an existing offer at that time that would be at least as good as the original tender offer.

Q Upon what do you base your earlier testimony that the Piper stock was selling at a discount?

A Well, eventually it was selling at a discount to several arbitrages.

Q But at this time, at the time you made this decision?

A Well, as I recall -- I must have been confused, because I am not sure there was an existing-- I am not sure there was an existing tender offer at that point.

Q Yes. Does that now refresh your recollection that you had discussions with someone at Chris-Craft concerning the price that they were paying for Piper stock?

1031A

A No,sir.

Q How else would you have gotten such information?

A I am not sure that I had any information to that extent. After all, their first tender offer was, as I recollect, not that successful. So whatever subsequent tender offers there had to be, they had to be at a higher price.

Q Mr. Williams, with specific reference now to your testimony that the discussion at the investment committee arose in the context that Chris-Craft was buying Piper stock at a discounted price --

A I didn't say that.

Q I think that was precisely your testimony.

A I hope it wasn't, because it isn't so.

Q Do you now have no recollection that you had information that Chris-Craft was buying the Piper stock at a discounted price?

A No,sir, I never said that.

Q You have no such information?

A To the best of my knowledge I never said that.

Q I see. Would you try again to relate the context at the investment committee meeting in which the decision or question of whether to purchase Piper stock arose?

A The Piper stock, as I recall, was selling below a price at which we thought someone either was tendering for or would tender for that stock.

Q What was that price? Do you recall?

A I believe it was around the 65 level. I can't be more definitive than that.

MR. MYERSON: Off the record a second.

(Discussion had off the record.)

MR. MYERSON: Back on the record.

Q I will show you, Mr. Williams, Exhibit 11 to Mr. Hawkinson's deposition, and ask you if that refreshes your recollection as to the price that Piper was selling at at that time?

A Yes.

Q That exhibit indicates, does it not, that as of April 23rd, when your funds began purchasing the Piper stock, they purchased it at $67.00 a share?

A Yes.

Q Now, is it your testimony that you had information concerning a tender offer at that time which indicated that the tender price was higher than thatprice?

A No, sir. That's not my testimony.

Q What were the reasons that you discussed at the investment committee meeting which led you to purchase the Piper stock at this time?

A I can't recall the conversations.

* * *

A As I recall, Piper had had -- Chris-Craft had had a relatively unsuccessful tender offer. I wouldn't even say that. They ended up with a minority position and on the basis of Chris-Craft holding a minority position in Piper, we felt that that was not, I felt that that was not the, that they wouldn't stop there, certainly, but that they had to pay higher prices to be successful in their gaining control of Piper.

Q What was the basis of your information that they had had an unsuccessful tender?

A As I recall, they tendered for, I don't recall the numbers, but they tendered for a certain amount, I think it was a minimum-maximum sort of a thing, and I don't even think the maximum amount would have given them 50 per cent. I think it was something short, and I don't definitely recall what the results of the tender offer were, but it seems to me like the initial tender offer was very unsuccessful.

Q Yes. And where did you get this information?

A It seems to me it was in the press as to the extent that -- let's see. The first tender offer ended sometime before that. I don't recall where I got the specific information that the tender offer was essentially unsuccessful. I don't recall how unsuccessful it was, but I get the impression, I can't be definitive as to where or how unsuccessful it was. I am not even, I can't even really testify that it was unsuccessful.

Q Yes. Well, I think your testimony reads clearly on that. What I am now interested in is what sources gave you that information?

A I don't know.

Q Now, let me ask you. Do you recall having any discussion with any person connected with the Mitchell-Hutchins at or around that time where this subject was discussed?

A I don't recall having one, no.

Q But you don't state that you didn't, do you?

A No, I don't.

Q What about with someone connected with Chris-Craft? Did you have any discussion with anybody connected with Chris-Craft where this subject was discussed?

A I don't recall having.

Q But you don't say that you didn't?

A I say that I didn't.

Q You did not have any such discussion with Chris-Craft?

A Right.

Q But you are not sure that you didn't have such a discussion with Mitchell-Hutchins?

A That's right.

January 22, 1971

[Proposed by Bangor Punta and Piper]

498. By the close of April 23, Summit had purchased its 8000 shares at prices ranging from 66 to 67-1/4. By the close of April 25, Growth had purchased 6700 shares at prices ranging from 66-1/4 to 67.

[Proposed by Bangor Punta and Piper]

499. On May 7, 1969 Chris-Craft issued a press release stating, among other things, that its proposed exchange offer would provide for each share of Piper stock one share of new Chris-Craft$2 preferred stock, convertible into 2.4 shares of common and five year warrants to purchase two shares of Chris-Craft common stock at $25 a share. Chris-Craft's press release did not place a value on its exchange offer.

[Proposed by Bangor Punta and Piper]

500. On May 7, 1969, Mr. Williams directed Growth, which had not purchased all the 20,000 shares authorized in April, to "hold" on any further purchases of Piper. On May 15, he cancelled Growth's purchase order for Piper stock.

January 22, 1971

[Proposed by Bangor Punta and Piper]

501. With regard to Summit and Growth's investments in Piper, John Hawkinson testified at deposition, at pp. 56-58,

Do you recall any discussions you had with your Investment Committee concerning the recommendation to purchase Piper securities by the Supervised Investors Growth Fund and Summit Fund, Mr. Hawkinson, specifically probably sometime in April of 1969?

A I have a general recollection of the recommendation on the part of the majority of the Committee to make purchases for Supervised Investors Growth Fund and Supervised Investors Summit Fund. My general recollection is that shortly after those

purchases were made, in which I did not formally concur, I recommended to the other members of the Committee that the purchasing be discontinued and the shares that we had acquired be liquidated.

Q Were there any reasons given by you either for taking such action or by the other members of the Investment Committee why they took such action?

A My memory is that the other members of the Investment Committee felt that in the competition for Piper between Chris-Craft and Bangor Punta, that with the limited floating supply competitively improved, tender offers might result in price appreciation; and that was the reason for their recommendation to purchase.

As far as my recommendation to sell, which was eventually persuasive, I felt the risk reward ratios were very unfavorable; and that fundamentally, Piper was over-valued at its present market.

Q So that it is your recollection that you did not concur in the original purchases of Piper stock?

A That is correct.

Q Let me perhaps put it in the proper frame. The purchases took place in April of 1969, and it wasn't until May 8, 1969 in which an announcement was

made of Bangor's interest in Piper. Do you recall whether you knew of Bangor's interest in Piper prior to reading it in the newspapers, or was it subsequent?

A I don't recall that I knew specifically of Bangor's interest prior to reading it in the newspaper; and I don't believe that members of the Investment Staff did, although I am not sure of that. But there was a great deal of discussion in the financial community concerning the opposition of the Piper management to the Chris-Craft tender and many rumors of efforts to interest another acquirer.

I have tangible memory of an attempt to interest Grumman as an illustration. I think the members of the Investment Committee were quite confident that some entity other than Crhis-Craft would enter the competitive picture.

Q Did any member of the Investment Committee at the time the discussions were taking place concerning the desirability of making these purchases of Piper stock refer to any conversations they had with anyone at Mitchell Hutchins?

A Not to my knowledge. One has to appreciate that individual members of the Investment Committee may have had individual discussions with analysts or members of the staff at which all Committee members are not present.

1042 A

With regard to Hawkinson's view of this investment, Mr. Williams testified at deposition, at pp. 271-274,

BY MR. MYERSON:

Q Now, you testified, Mr. Williams, that you do recall generally a conversation that you had with Mr. Hawkinson where he told you he thought the Piper stock was over-valued. Is that correct?

A yes,sir.

Q When he told you that, what, if anything, did you respond?

A I don't recall.

Q Do you recall that there was some discussion following his statement?

A I recall a discussion some place in there.

Q Just give me your best, general recollection as to what the discussion was?

A Well, I am not sure that he was at the first -- I am not sure in recollecting now, that he was at the first meeting that the decision was made to buy the Piper stock. Now, I am not sure of that.

I am sure there was a conversation sometime after that. It may have been even at that meeting. I am not sure he was at the meeting, but there was a conversation sometime within that time frame that he disagreed with the purchase, and I attempted to defend it on the basis of just what I said, and that wasn't good enough.

Q What do you mean when you say it wasn't good enough?

A Well, it wasn't a good enough reason to take a shot, to buy Piper for a possible somebody that was reasonably unidentifiable.

Q Well, Chris-Craft was identifiable?

A Yes, but we had -- as I recall, we didn't have definitive -- we had nothing definitive that they would go further.

Q Yes, but that was your understanding, that they would, isn't that your testimony?

A My testimony is that that was our calculation that they would.

Q Yes, yes, and your understanding?

A Not my understanding, but my calculation.

Q All right. All right. When Mr. Hawkinson told you that wasn't a good enough reason, what was your response?

A I don't recall.

Q Did you suggest that you -- strike that.

Had you purchased any Piper securities as of this time when you had this discussion with Mr. Hawkinson?

A I don't recall.

Q Did you suggest to Mr. Hawkinson that as a result of his opinion that it was over-valued, that you would either not purchase the Piper stock, if you had not purchased it yet, or that you would sell the Piper stock, if you had commenced purchasing it?

A I don't recall.

Q Did Mr. Hawkinson suggest that you take steps to rescind this purchase?

A i don't recall. I think he took steps to say, "Cancel the order."

Q And did you?

A I think so, yes.

Q Your best recollection is that you cancelled the order upon his instructing you to do so?

A I am not sure if it was quite that cut and dried, but --

Q I show you Exhibit 11, for identification, and ask you to review -- I am sorry, Exhibit 11 to the Hawkinson deposition, and ask you if that refreshes your recollection that you did not cancel the order?

A Well, there were 5,000 shares purchased here. I guess the order wasn't cancelled prior to at least buying 5,000 shares.

Q Yes. So that it does refresh your recollection that the order was not cancelled?

A No, it doesn't. It refreshes my-recollection that there was 5,000 shares purchased.

Q So that your recollection is that there were at least 5,000 shares purchased?

A Yes.

[Proposed by Bangor Punta and Piper]

502. Mr. Williams testified at deposition, at pp. 285-286,

Q Do you recall having any conversation with Roger Spencer prior to the time that you sold the Piper stock similar to the conversation that you had had with him, which you testified about earlier?

A I don't recall one, again within this time frame of the conversation that I had with Mr. Spencer, that there would be an $85.00 offer some place. I recall having a conversation with him when there was a Piper, a Chris-Craft offer that didn't, it was, I was disappointed, and I recall having a conversation then, but as I recall, a very short conversation, but I don't remember when that was, quite.

I think the basis of that conversation was, "Thanks a lot, Pal. You really did me a big favor."

Q And it is your best recollection, is it not, that that conversation took place subsequent to the conversation you had with him which you testified about earlier?

A Yes.

503. (Proposed by Chris-Craft)

Mr. Williams testified at deposition, at pp. 282-284,

Q Was there a discussion at the Investment Committee concerning the liquidation of the Piper stock?

A Yes.

Q When was that?

A I don't recall.

Q Was it prior to June 3rd?

A I think so.

Q Who was present at the meeting?

A I don't recall.

Q You recall that there was a meeting?

A Yes.

Q Is it your best recollection that Mr. Hawkinson was present?

A I just don't recall who was present at the meeting.

Q Do you recall that there was a discussion of whether or not to liquidate your holdings in Piper?

A Yes, there was a discussion to that extent.

Q What was the substance of that discussion?

A I don't recall.

Q But you recall there was a discussion?

A Yes.

Q Do you recall who participated in the discussion?

A No,sir.

Q Did you suggest the possibility of disposing of the Piper stock at this time?

A I don't recall.

Q Give me your best, general recollection on the context of how this question arose or was presented as to whether or not you should dispose of your Piper stock?

A Well, there was a conversationabout the Bangor Punta offer and the value of that offer, and our opinion was, I don't know whose opinion, so I will just say our opinion was that, as I recall how that-- that was supposed to be an offer that was worth $80.00. I believe that was the upper, and we couldn't come up to $80.00. As I recall, the Piper stock was selling in the low 70s, and in our best judgment the Bangor Punta offer was worth something in the order of $65.00.

It seemed to me that we put a value on

the Bangor Punta offer in the area of $65.00 and I don't recall if there was a competing offer at that time or at that moment, or not. Ireally don't remember.

As I recall, the Bangor Punta offer was -- there seemed to be some time lag here that we took it kind of at face value and then we didn't take it at face value, and as I recollect -- I think this is in the right time frame, I don't know, though -- yes, this is part of the conversation, that the Bangor Punta offer wasn't what it was supposed to be, and, therefore, it seemed to me, if I recall at that time, I don't remember if there was a competing offer, but on the basis of the Bangor Punta offer we didn't care for that one because that one was not valued, that one did not have the value that it was purported to have. Period. And that was part of the conversation, as to what to do with Piper, and I am digging around for the rest of it.

January 22, 1971

[Proposed by Bangor Punta and Piper]

504. On June 3, Summit sold 1400 shares of Piper at 71 to 71-3/4.

January 22, 1971

[Proposed by Bangor Punta and Piper]

505. A letter of S.I.S. dated June 3, 1969, addressed to the First Jersey National Bank, the funds' nominee, as originally prepared stated:

Please prepare to tender on the accompanying Letters of Transmittal the following shares of Piper Aircraft Corporation common stock:

5,000 shares Supervised Investors Growth Fund, Inc.
8,300 shares Supervised Investors Summit Fund, Inc.

Please do not tender the shares to the Exchange Agent until you receive a phone call or telegram from us on June 5, 1969 prior to 1:00 PM New York time as a competing tender offer could be revised.

Should the funds elect to tender, the Letters of Transmittal must reach the Bank of New York, 20 Broad Street, New York City, prior to 5:00 PM New York time on June 5, 1969.

13,300 shares of Piper was the total combined holdings of Summit and Growth at the close of business on June 3.

[Proposed by Bangor Punta and Piper]

506. On June 4 and 5, Summit and Growth sold a total of 3,400 shares of Piper at 69-1/2 to 70. Their "sell" tickets are marked "disc" (discontinue) with a stamped date of June 4, 1969. Summit and Growth did not sell any Piper stock on the market after June 5.

January 22, 1971

[Proposed by Bangor Punta and Piper]

507. The numbers on the June 3 letter described in finding 354(b) were changed by hand to read "4200" and "5700" respectively. 9900 shares of Piper was the total combined holding of Summit and Growth after the market sales on June 4 and 5.

[Proposed by Bangor Punta]

508. On June 5, 1969, the two funds tendered their remaining 9900 shares of Piper to Chris-Craft on its registered exchange offer. Summit and Growth valued the securities and cash received on the exchange offer at $67.25. In the fall of 1969 all such Chris-Craft securities were sold for $559,067.90 or $56.47 per share of Piper tendered.

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[Proposed by Bangor Punta and Piper]

509. Regarding the decision to tender the Piper stock, Mr. Hawkinson testified at deposition, at pp. 59-62,

BY MR. RYAN:

Q Mr. Hawkinson, you testified that you had conversations with your fellow members of the Investment Committee at which there were discussions concerning the liquidation of the Piper stock held by the two funds you represent. Do you recall in those discussions any consideration given to tendering the Piper shares for Chris-Craft securities? And let me just show you Bangor Punta's Exhibit No. 9 for Identification, which is a copy of a letter of June 3 addressed to the First Jersey Bank from Mr. Anderson of your firm and ask you if this may refresh your recollection.

(Said document was marked Bangor Punta's Exhibit No. 9 for Identification.)

THE WITNESS: I didn't know that this action had been taken until after it was taken. And after the action was taken, I was critical of Mr. Williams, the Portfolio Manager, for having made the exchange

and stated that the shares should have been sold for cash.

BY MR. RYAN:

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Q Did you have any discussions with Mr. Williams concerning the reasons why he decided not to sell the Piper shares--withdraw the question.

Will you please mark these documents as Bangor Punta's Exhibits Nos. 10 and 11 for Identification?

(Said documents were marked Bangor Punta's Exhibits Nos. 10 and 11 for Identification.)

BY MR. RYAN:

Q Let me show you Bangor Punta's Exhibit No. 10 for Identification, which is a copy of a data processing sheet, read-out sheet, furnished by your firm concerning the purchases of Piper Aircarft through October, 1969, and the next day or two--excuse me--the top sheet is sales for the Summit Fund through October, 1969, and the next is another similar sheet relating to purchases through April, 1969 of Piper Aircraft Company stock. And then Bangor Punta's Exhibit No. 11 will be similar sheets. These are for Supervised Investors Growth Fund, purchases through April, 1969, and then the next sheet is sales through October, 1969, and ask you whether these sheets refresh your recollection as to what the dis-

position was of the Piper securities both between tendering and actual sales across the Exchange?

These sheets seem to indicate, Mr. Hawkinson, just to focus you upon it, that some shares were tendered and some were sold, and I am asking you whether this refreshes your recollection concerning any conversations you had with Mr. Williams concerning the reasons why he elected to proceed by selling some and tendering others?

A My memory is that, as I have previously testified, I urged the cash sale of the shares. I believe the reason that Mr. Williams gave was that they had not been successful in the liquidation of all of the shares and that there was a prospect of the Piper shares being delisted; and he felt in the tender that he was creating more marketability than a delisted security.

Q Well, the type of securities were not delisted until early August?

A Yes, but anyone sophisticated or knowledgable in this business knows that with a diminished supply of securities that delisting is a threat; and no one without detailed knowledge of New York Stock Exchange procedures can estimate the exact time when such delisting will occur.

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Q Did you express to Mr. Williams or to anyone else in your firm the reasons why you felt it was more desirable to sell the shares than to tender the shares?

A Yes, I did, because we were or I was not constructive on the outlook for market performance of the Chris-Craft securities received and exchanged over the near term and would have preferred other investment alternatives.

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[Proposed by Bangor Punta and Piper]

510. Thomas Williams called Chris-Craft on July 3, 1969 and spoke to Mr. Rochlis. Mr. Williams' request that Chris-Craft advise him what broker was designated, if any, on the stock that S.I.S. had tendered, was referred to Mr. Gordon. Mr. Williams also wanted to discuss factors relating to the Chris-Craft exchange offer; and was told that Mr. Siegel would call him back.

[Proposed by Bangor Punta and Piper]

512. On or before April 1, 1969, Tech Fund decided to sell its position in Chris-Craft securities, as set forth in finding 430. Sales of Chris-Craft securities were made from March 28 through July 7, 1969. With regard to these sales, Mr. Williams testified at deposition, at pp. 212-213 and 237-238,

Q What were the factors, Mr. Williams, that resulted in your decision to sell this stock over roughly a three and a half month period?

A Well, to begin with, we thought we could sell it at forty-six, obviously. It did not sell at forty-six.

Q And you knew that as of April 23rd or April 13th.

A Right. I believe at that point we changed the limit or gave it a discretionary basis. If it took that long the discussion must have been, don't kill it but feed it into the market.

Q But the decision reached by the Investment Committee on or about April 1st was that you should sell your holdings because it was not a valuable investment?

A Yes.

Q And yet having arrived at that decision, you then decided to sell this stock over roughly a three and a half month period?

A No, that wasn't the decision. That's the way it worked out, but that wasn't the decision.

Q Aren't you responsible ultimately for seeing to it when this stock is sold and the price at which it is sold?

A Yes, sir.

Q So that was a decision, was it not --

MR. CHORN: He has already testified that it was not his decision.

THE WITNESS: The decision was to sell it. There was no time decision made. I have repeatedly said in the testimony that we did not -- the criterion was price.

* * *

Q Did you consider the effect that your sale of the Chris-Craft stock on the days and volumes and amounts at which you sold it might have on the value of the Chris-Craft stock?

A Yes, this was considered.

Q Did you consider this in discussions had with anyone else in your company?

A I don't recall.

Q Did you have any discussions concerning this with anyone at Chris-Craft?

A No.

Q Did anyone at your company have such discussions?

A I don't know.

Q Did you have discussions concerning this with anyone at Mitchell-Hutchins?

A Not to my knowledge.

Q Did anyone at your company have such discussions?

A Not to my knowledge.

Q Did Mr. Hawkinson ever talk to you about the means by which the stock was being disposed of and the time it was taking to dispose of it?

A I don't recall.

Q If I tell you that Mr. Hawkinson testified that there were periodic reviews of how the stock was being

disposed of, does that refresh your recollection that you had such discussions with him?

A There are always periodic reviews of stocks being disposed of.

Q Does that refresh your recollection?

A Yes, sir.

Q What was the nature of the conversations that you had with Mr. Hawkinson concerning the period of time it was taking you to dispose of the stock and the value that you were getting for it?

A I don't recall.

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January 21, 1971

1064 A

[Proposed by Bangor Punta and Piper]

513. All Tech Fund's sales of Chris-Craft securities prior to May 6 were made through Lazard Freres, Amivest, Dillon Reed and Rodman & Renshaw. From and after May 7, all sales were made through Mitchell Hutchins, except for the last sale, of 10,600 shares of common stock, made on July 7 through Paine, Webber, Jackson & Curtis.

[Proposed by Bangor Punta and Piper]

514. Williams' appointment calendar shows an appointment with Mitchell Hutchins on May 16. Williams testified he had no recollection of whether this meeting took place, or, if it did, what transpired. [illegible]e room at Mitchell Hutchins informed Roger Spencer, in his capacity as the analyst responsible for Chris-Craft, that Tech Fund was selling Chris-Craft securities when the sales occurred. Mr. Spencer testified at deposition, at pp. 43-44,

Q Did you speak to anyone at Technology Funds concerning the reasons why they were selling the Chris-Craft shares?

A I don't recall any discussions with respect to the reasons why they were selling. It is just a matter of follow-up, talking to the analyst. Just about the general affairs of the corporation -- how business was going and so forth.

Q Did you ever tell the Technology Funds that you knew they were selling Chris-Craft shares and did you ask them why they were selling Chris-Craft shares?

A I don't recall asking them why they were selling, no.

Q Do you know how many shares of Chris-Craft they sold?

A No.

Q Do you know whether they sold them in small blocks or in large blocks?

A Well, I know they sold them over a period of time, which would indicate to me that they were sold in relatively small blocks.

Q Did you ever have any discussion with anyone at Technology Funds, as to the reason why they were selling them in small blocks instead of in large blocks?

A No.

Q Did you ever have any discussions with anyone at Chris-Craft over the fact that Technology Funds was selling Chris-Craft shares?

A No.

Q Did you ever tell anyone at Chris-Craft that Technology Funds was selling Chris-Craft shares?

A No.

[Proposed by Bangor Punta and Piper]

515. On the Chris-Craft common stock, Tech Fund's internal records matching sales against purchases and accounting for gains and losses show that Tech Fund recognized a loss of approximately $6 per share on the first sales, totaling 1600 shares, on March 28. The loss was $18 to $20 per share (adjusted for the split) on the last sales totaling 10,600 shares on July 7. Tech Fund recognized an overall loss of $691,000 on its total investment of $3,139,000 (not including the Chris-Craft securities received by Summit and Growth on the exchange offer for their Piper stock).

January 4, 1971

[Proposed by Bangor Punta and Piper]

516. Between April 30 and May 14, 1969, American Investors Fund sold all of the 22,500 shares of Chris-Craft common stock it had purchased in February. On May 20, 1969, it sold the $78,000 principal amount of Chris-Craft 6% debentures it had purchased in February.

[Proposed by Bangor Punta and Piper]

517. On May 6, 1969, a two-for-one split of Chris-Craft's common stock became effective.

[Proposed by Bangor Punta and Piper]

518. On March 5 and 6, 1969, Keystone's Polaris Fund purchased an additional 10,000 shares of Chris-Craft common stock, thereby reaching the 50,000 shares it decided to buy on January 16. The prices ranged from 46-1/4 to 47-3/4. Between April 17 and April 28, 1969, Polaris Fund purchased an additional 20,000 shares of Chris-Craft common stock, bringing its total holdings to 70,000 shares (before the 2 x 1 split in May 1969). Mr. Greene, the portfolio manager of Polaris, who directed that the additional purchase be made, testified at deposition that he did not recall the reason for the purchase, nor any conversation with anyone inside or outside Keystone regarding this purchase. The prices paid by Polaris ranged from 40-1/2 to 44-5/8 per share.

[Proposed by Bangor Punta and Piper]

519. Between March 19 and March 26, Keystone's S-4 fund purchased an additional 13,300 shares of Chris-Craft common stock, bringing its total holdings to 60,000 shares (before the split). The prices ranged from 46-3/4 to 48. S-4 did not purchase the entire 100,000 shares authorized by the executive committee on January 16. Its buy order was cancelled on May 15.

[Proposed by Bangor Punta and Piper]

520. Mr. Siegel met Tim Bueneman of Keystone at Chris-Craft's New York offices on June 5, 1969.

[Proposed by Chris-Craft]

521. Mr. Bueneman's deposition was not taken in this action.

[Proposed by Bangor Punta and Piper]

522. Polaris sold 9,500 shares of Chris-Craft common on August 1, 1969 at 12 to 12-1/4. On August 4, Mr. Greene made a written recommendation that the fund sell 90,000 shares of Chris-Craft, leaving a balance of zero shares [the fund then held 130,500 shares of Chris-Craft, after adjustment for the split]; this was approved by the executive committee on August 4 and 5. The S-4 fund sold 12,100 shares of Chris-Craft on August 1 at 12 to 12-1/4. A recommendation similar to that of Polaris that the S-4 Fund sell all its 120,000 shares of Chris-Craft stock was approved by the executive committee on August 4 and 5. Tim Bueneman signed the Research Department Comments on both funds' sale recommendations, dated August 4, 1969, which state,

s Craft was originally purchased because of the enormous potential from a turnaround
argins at the company's boat division. Relative to competition, margins in the
sion are razor-thin, and several highly-regarded production executives from Ford and
al Motors were imported to executive improvements. Although this potential still
s, it is likely to remain buried under the company's current entanglement with Bangor
in a battle to control Piper Aircraft.

er hopes for a rapid settlement of the Piper situation appear to be fading. Final
offers of both CCN and BNK expired last week and preliminary results indicate that
shares are held approximately as follows: CCN: 38% and BNK: 44%. A near-term
ment of this deadlock is questionable since BNK appears unwilling to sell its hold-
nd is unable to raise the cash to purchase the shares held by Chris Craft.

gh the stock has dropped sharply since original purchase, I see no immediate end to
oblem and suggest elimination of the issue.

[Proposed by Bangor Punta and Piper]

523. Both Keystone funds had sold their entire holdings of Chris-Craft, a total of 260,000 shares of common stock (after the split), by September 4, 1969. The two funds recognized a loss of $3,625,048 on an investment of $6,447,579.

[Proposed by Bangor Punta and Piper]

524. Regarding these transactions, Mr. Greene testified at deposition at pp. 40-41,

Q The sale of Chris Craft at that time represented a rather substantial loss, did it not?

A That's right.

Q Does that refresh your recollection that anyone asked you at or about that time how you had come to make additional purchases back in April of 1969?

A I don't recall.

Q Do you recall that no one asked you such a question?

A I just don't recall the circumstances you mention or the event.

Q You don't recall one way or the other?

A Or the event. One way or the other.

Q You don't recall anyone on the Executive Committee asking you why you had purchased an additional 20,000 shares in April.

A No.

Q And you don't recall why you purchased the additional 20,000 shares?

A I don't recall that either.

[Proposed by Bangor Punta and Piper]

525. On March 26, 1969, the portfolio manager of IDS's Progressive Fund made a written sale recommendation for its 9000 shares of Chris-Craft common stock, stating that "Chris-Craft is having trouble consummating the Piper Aircraft acquisition. The market is not in the mood for 'conglomerates' even in the leisure field and hence sale is recommended." The stock was all sold by April 9. The Fund recognized a loss of $54,719.83 on an investment of $488,844.60.

[Proposed by Bangor Punta and Piper]

526. Under a provision of the 5-3/4% Note Agreement, Chris-Craft agreed to furnish to the Note holders balance sheets and income and surplus statements within 45 days after the end of each of the first three quarters of its fiscal year. Under a further provision of the Agreement, Chris-Craft agreed to furnish at the same time a certificate signed by an officer of the company stating "that no event has occurred to his knowledge which would constitute an Event of Default hereunder or which would so constitute but for the requirement that notice be given or time elapse, or both."

[Proposed by Bangor Punta and Piper]

527. The second quarter of Chris-Craft's fiscal year ended on February 28, 1969. 45 days from February 28 was April 14, 1969.

[Proposed by Bangor Punta and Piper]

528. In letters dated April 17 and 23 to the holders of its 5-3/4% Notes, including IDS, Chris-Craft stated,

> Chris-Craft Industries, Inc. presently has, or may in the future have, Investments in various common stocks in the amount of $7,000,000 in excess of the amount permissible under Section 6.2(d)(ix), the "other Investment" clause, of the Note Purchase Agreement.

The April 23 letter continued,

> We request that you waive this default to the limited extent specified below in view of the technical and temporary nature thereof.
>
> Your waiver shall be effective through November 3, 1969 at which time such waiver shall expire. Your waiver shall be to the following effect:
>
> (a) while the waiver remains in effect, Chris-Craft may have Investments (as defined in the Note Purchase Agreement) in an amount which exceeds the amount permitted by Section 6.2(d)(ix) by not more than $7,000,000, provided that Chris-Craft will not make any additional Investments (other than Investments permitted under paragraphs (i) through (viii) of Section 6.2(d)) except in shares of Common Stock of Piper Aircraft Corporation; and
>
> (b) while the waiver remains in effect, Chris-Craft may, notwithstanding the provisions of Section 6.2 (d), acquire shares of Common Stock of Piper Aircraft Corporation pursuant to an exchange offer solely for equity securities, including warrants to purchase Common Stock, of Chris-Craft.

The Note holders agreed to this waiver in this form.

[Proposed by Bangor Punta and Piper]

529. William Beardsley of IDS testified at deposition, at pp. 68-69, that he believed the Chris-Craft management had advised him at or about the time of the letters quoted in finding 359(c),

A Vaguely I would recall that management said that some of the investors wanted a time limit for this investment during which the company would either be acquiring an adequate amount of this company stock, talking about Piper at this point, that it could be considered a subsidiary, which would solve the problem, or would dispose of its investment in Piper and thereby solve the problem that way -- either one of which the management assured us would happen prior to November 31, 1969.

Q Do you recall any conversations where it was discussed that the failure of Chris-Craft to do either one of these things might have an impact on its ability to repay these notes?

MR. AUSEITZ: Object to the form of the question.

THE WITNESS: Would the reporter read the question?

(The question was read.)

A No, because if the first course of action would be to acquire enough of the stock that they could consider it a subsidiary, they would obviously have all of the debt outstanding that they presently had. If they chose a second route and disposed of their Piper stock, they would free up some cash for other purposes. We were willing, if they were able to get control of Piper, to let them have the debt outstanding.

Q My question, Mr. Beardsley, was what would happen if neither of those eventualities occurred.

A Then the company would have to request a waiver or we would be able to call our loan.

At the time of these letters, it was IDS's understanding that Chris-Craft's exchange offer for Piper, the registration for which had been filed but had not become effective, was in the direction of acquiring control of Piper. Mr. Beardsley further testified at deposition, at p. 69,

A Well, that I don't know except we obviously didn't want the company to be owning a small percentage of Piper that they could not control the Board and thereby could not bring in its profits, and so forth.

[Proposed by Bangor Punta and Piper]

530. Mr. Beardsley testified at deposition, at pp. 70-71,

By Mr. Barrett:

Q Do you recall having any discussions with any of your associates at I.D.S. at the time that these amendments were being considered that it might be difficult for Chris-Craft to dispose of its interest in Piper?

A No, I do not.

Q Do you recall having any discussions with any of your associates at I.D.S. during the Spring of 1969, referring approximately to the time that you had these negotiations and subsequent to that time, where they told you that they were considering the possible disposition of any or all of the Chris-Craft securities then owned by these funds?

A I don't recall any specific conversations.

Q Do you recall generally having such conversations?

A No, I don't.

Q You don't recall any conversations at all?

A I don't recall any conversations with the Portfolio Managers who make that decision.

Q Did you have any discussions with Mr. Wadman during this period?

A As I have indicated before, I consulted with Mr. Wadman because of his contacts with the company and the fact that he was instrumental in us putting the investment on the books in the first place.

In the spring of 1969 Mr. Wadman knew that the price of Chris-Craft securities had declined. He learned at some time that IDS Progressive Fund had sold all its Chris-Craft stock.

January 22, 1971

[Proposed by Bangor Punta and Piper]

531. Mr. Wadman testified at deposition that he had many telephone conversations with Roger Spencer in the spring of 1969. Mr. Wadman's notes indicate that on April 8 and April 14, he discussed with Mr. Spencer Chris-Craft's pending exchange offer for Piper.

January 22, 1971

1086 A

[Proposed by Bangor Punta and Piper]

532. Mr. Wadman's business records for 1969 show the following appointments in New York:

Thursday, February 6:

Chris-Craft Industries 600 Madison Avenue 212-421-0200	9:30	Herb Siegel, President
Loeb, Rhoades 42 Wall Street 212-530-4271	11:30	Steve Arpante

Wednesday, March 5th:

Chris-Craft Industries 600 Madison Avenue 212-421-0200	4:00pm	Herb Siegel

Wednesday, June 25

Chris-Craft Industries 600 Madison Avenue 212-421-0200	3:30pm	Len Gordon, VP

[Proposed by Bangor Punta and Piper]

533. As of the date of Mr. Wadman's deposition, June 30, 1970, Investors Mutual and Stock funds had sold none of the Chris-Craft securities purchased in January 1969. At the close of business that day, based on the closing market prices, their Chris-Craft securities were worth a total of $1,420,935.

[Proposed by Bangor Punta and Piper]

536. The preliminary prospectus contained in Chris-Craft's registration statement filed February 27, 1969 was made available to brokers and interested persons, but was not mailed to Piper shareholders.

[Proposed by Bangor Punta and Piper]

537. Chris-Craft's exchange offer for Piper became effective May 15, 1969. Chris-Craft's final prospectus dated May 19, setting forth the offer, was publicly distributed, including a mailing to Piper shareholders. Chris-Craft's final prospectus dated July 24, 1969 offer was also publicly distributed, including a mailing to Piper shareholders.

[Proposed by Bangor Punta and Piper]

538. Chris-Craft's registered exchange offer for Piper stock closed on August 4, 1969. Chris-Craft purchased 112,089 shares of Piper stock thereunder.

[Proposed by Bangor Punta and Piper]

539. Chris-Craft's preliminary prospectus dated February 27 stated, with respect to the 5-3/4% Notes, at pp. 8, 26, 38, 45 and 49,

CAPITALIZATION

The capitalization ~~of Chris-Craft~~ as of January 31, 1969, and Piper as of September 30, 1968 (as set forth in its 1968 Annual Report to Stockholders) and as adjusted to give effect to the Exchange Offer, assuming that 300,000 Piper shares are accepted by Chris-Craft, are as follows:

	Authorized or to be Authorized	Outstanding	To be Outstanding
Long-Term Debt—includes amounts due within one year(1):			
Chris-Craft—			
5¾% Promissory Notes due 1968-1979	$19,000,000	$17,500,000	$17,500,000

* * *

(1) See Notes (5) and (11) of "Notes to Consolidated Financial Statements" of Chris-Craft and Note 6 of "Notes to Consolidated Financial Statements" of Piper for further details with respect to the long-term debt.

* * *

The Note Purchase Agreements, dated December 20, 1965, as amended ("Note Agreements"), pursuant to which Chris-Craft's 5¾% Promissory Notes ("Notes") were issued, provide, among other things, that Chris-Craft must offer to apply the proceeds of any sale of all or a substantial part of the consolidated assets of Chris-Craft and its consolidated subsidiaries (other than sales of securities of other companies) to the prepayment of the Notes. The Note Agreements, as amended, also contain restrictions on the issue of senior and subordinated funded indebtedness by Chris-Craft. As of January 1, 1969, Chris-Craft is not able to issue any additional such indebtedness without the consent of the holders of the Notes. See Note (5) to "Notes to Consolidated Financial Statements" of Chris-Craft for further details with respect to the aforementioned Note Agreements and Notes. This summary of certain of the provisions of the Note Agreements and Notes is qualified by the complete provisions which are set forth in the Note Agreements and Notes, copies of which are included among the exhibits to this Registration Statement.

* * *

Dividend and Other Restrictions

Certain debt instruments of Chris-Craft contain restrictions upon dividend payments and the purchase and redemption of capital stock. The most restrictive of these instruments, the Note Purchase Agreements dated December 20, 1965, as amended, governing Chris-Craft's 5¾% Promissory Notes, does not permit such payments in excess of an amount equal to 70% of the consolidated net income of Chris-Craft for the period from December 31, 1964, to the date of such payment. As a result of this restriction, as of August 31, 1968, $2,700,000 was available for dividend payments and the purchase and redemption of capital stock.

* * *

CONSOLIDATED BALANCE SHEET—AUGUST 31, 1968 (Note 1)

LIABILITIES AND STOCKHOLDERS' INVESTMENT

* * *

LONG-TERM DEBT (Notes 5 and 6):	
5¾% promissory notes	$ 17,900,000

* * *

(5) LONG-TERM DEBT AND RESTRICTIONS:

The provisions of the 5¾% Promissory Note Purchase Agreements are more restrictive as to the payment of dividends than the Indenture covering the 7% subordinated debentures. As of August 31, 1968, approximately $2,700,000 of consolidated net income (as defined) is free of such restriction and is available for payment of cash dividends. The notes, which are unsecured, require payments of $1,100,000 annually, from December 15, 1968 through December 15, 1984. The Company is presently negotiating changes in the Agreements which would increase annual payments to $1,500,000 with maturity at December 15, 1979. These negotiations were completed in December, 1968.

The 7% subordinated debentures due September 30, 1972 require annual sinking fund payments on May 15 based on consolidated net income (as defined) for the preceding year. The principal amount outstanding at August 31, 1968 of $3,780,000 is stated net of $551,900 principal amount of debentures repurchased and held for future sinking fund payments.

The aggregate minimum maturities and sinking fund requirements on long-term debt for the five years subsequent to August 31, 1968 are $1,386,000 in 1969, $1,206,000 in 1970, $1,206,000 in 1971, $1,186,000 in 1972 and $1,115,000 in 1973.

No other statement was made with respect to the Notes.

[Proposed by Bangor Punta and Piper]

543. Chris-Craft's final prospectuses dated May 19 and July 24 made the following additional statement with regard to the 5 3/4% Notes, at p.33,

. The Note Agreements, as amended, also contain limitations upon investments which will necessitate, on or before November 3, 1969, either sale by Chris-Craft of approximately $7,000,000 of investments or a further waiver by the Noteholders of the provisions limiting investments.

January 22, 1971

[Proposed by Bangor Punta and Piper]

544. Chris-Craft's final prospectuses dated May 19, 1969 and July 24, 1969 stated, at pp. 4 and 24, that the highest price of Chris-Craft common stock on the New York Stock Exchange from January 1, 1969 through May 19 or July 15, respectively, was 29-1/8 (adjusted retroactively for the split). The prospectus stated that this high occurred in the first quarter of 1969; it did not state the specific date on which this high occurred.

January 22, 1971

[Proposed by Bangor Punta and Piper]

546. With respect to the merger of Chris-Craft Industries, Inc. and Baldwin-Montrose Chemical Company, Inc. in 1968, the Chris-Craft preliminary and final prospectuses stated,

NOTES TO STATEMENTS OF CONSOLIDATED INCOME

(Including Notes Applicable to Periods Not Examined by Independent Public Accountants)

* * *

(2) The statements of consolidated income have been restated to include the operations of Baldwin-Montrose Chemical Company, Incorporated which was merged with and into Chris-Craft in June 1968 and accounted for on a pooling of interests basis. In connection therewith, 702,263 shares of $1.40 Convertible Preferred Stock were issued to Baldwin-Montrose shareholders and 1,465,038 shares of Chris-Craft common stock, including 1,174,000 shares held by Baldwin-Montrose at the date of merger, were retired as treasury stock.

* * *

On May 10, 1968, an action was commenced in the United States District Court for the Eastern District of Pennsylvania by Colonial Realty Corporation, allegedly as representative of certain stockholders of Chris-Craft, against Chris-Craft and others, among whom are certain individuals who are now or were formerly directors of Chris-Craft or Baldwin-Montrose. The complaint (i) alleges (a) a conspiracy to acquire control of Chris-Craft, (b) omissions or untrue statements in the Proxy Statement relating to the merger of Baldwin-Montrose with and into Chris-Craft, (c) breaches of fiduciary duties and (d) the unconstitutionality of certain sections of the General Corporation Law of the State of Delaware and (ii) prays for damages in an unspecified amount and for rescission of such merger. Motions to dismiss the action have been denied without prejudice and an answer on the merits has been filed denying the material allegations of the amended complaint. On the basis of initial investigations and information supplied by management, Messrs. Cohen, Shapiro, Berger, Polisher & Cohen, special counsel with respect to such suit, are of the opinon that the complant is without merit.

* * *

CHRIS-CRAFT INDUSTRIES, INC.

AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) PRINCIPLES OF CONSOLIDATION:

* * *

(b) *Pooling of Interests*—

In June 1968, Baldwin-Montrose Chemical Company, Incorporated and wholly-owned subsidiaries were merged with and into the Company pursuant to a plan and agreement of merger whereby 702,263 shares of $1.40 Convertible Preferred Stock were issued to Baldwin-Montrose common shareholders. This merger has been accounted for as a pooling of interests and the consolidated financial statements have been restated retroactively.

No other statement was made with respect to the merger.

January 22, 1971

[Proposed by Bangor Punta and Piper]

547. On April 15, 1970, summary judgment was entered against certain defendants, including Baldwin-Montrose Chemical Co., in the matter of Colonial Realty Corporation v. Baldwin-Montrose Chemical Co. et al., on the issue of liability, on the ground that the joint proxy statement sent to shareholders of Chris-Craft and of Baldwin-Montrose soliciting proxies in favor of the merger of the two companies, contravened SEC Rule 14(a)-9 in that it omitted to state a material fact necessary in order to make the statements therein not false or misleading.

(312 F. Supp. 1296, E.D. Penna. 1970). The case is still pending.

January 22, 1971

[Proposed by Bangor Punta and Piper]

549. The financial statements in Chris-Craft's final prospectus stated the cost of money borrowed by Chris-Craft to pay for Piper stock (applied to the purchases, in the Notes to the Pro Forma Statements of Income, at p. 19). No adjustment was made, if required, for Chris-Craft's funds on deposit at the PNB and Chase.

January 22, 1971

[Proposed by Bangor Punta and Piper]

550. The Chris-Craft and Piper Combined Pro Forma Statements of Income in Chris-Craft's final prospectuses stated (at Note (3), p. 19) that all the debenture proceeds and two-thirds of the PNB loan were applied to purchases of Piper. Chris-Craft was obligated to pay 6% on the debentures, and the prime rate on the PNB loan. The prime rate was 7-1/2% on May 19 and 8-1/2% on July 24, 1969.

January 22, 1971

1100A

[Proposed by Bangor Punta and Piper]

550A. Chris-Craft's July 24 prospectus (at Note (1) to the Chris-Craft and Piper Combined Pro Forma Balance Sheets, p. 21), stated,

"If Chris-Craft acquires less than a majority interest in Piper Common Stock, the transaction will be recorded as an investment at the cost of the 33.88% interest purchased for cash consideration of Stock, six Warrants and $10 cash consideration in connection therewith (for purposes of preparing the foregoing pro forma statements only, such values have been estimated by Chris-Craft at $88.00, representing $51.00 for the $2.00 Preferred Stock, $27.00 for the six Warrants and the $10 cash consideration)."

[Proposed by Bangor Punta and Piper]

551. Chris-Craft's 10-K Statement filed with the SEC for the fiscal year ended August 31, 1969, at Schedule I, shows that Chris-Craft was carrying its investment in Piper stock at $45,868,000, which amount was therein stated to represent the cost. In making this calculation for the 10-K Statement Chris-Craft valued the cost of the package of securities and cash issued in the exchange offer at $75.50.

1102 A

THE COURT: It looks like you gentlemen and ladies have been very busy, and I must say somebody must have thought that they were passing a preparation bunk to me, and I am going to pass it right back.

I've gone through the submission here and we are a long way off from being ready for trial, and the reason that we are a long way off from being ready for trial is that except for some minutia there has been no basic agreement on substantive facts that are not fairly controvertible, and I'm sure that there are many things that will not be controverted at the trial as to which there has been no agreement.

Under those circumstances it makes a shambles of the trial and an unnecessary pretrial procedure to attempt to adjudicate at the trial things that really don't require trial. You don't get at them because of this peripheral matter that should be cleared away first.

The findings, curiously enough, contain statements in some of them saying that the other fellow's findings are evidentiary detail and then go on for four, five or six pages and give a whole spate of evidence on the supposed finding of ultimate fact that is offered to counter the evidentiary detail. There is no clear-cut theory of the respective liabilities of the

various defendants that I can gather and distill from these findings.

The Court of Appeals dealt very simply with these cases and said there were two things that the plaintiff was claiming and on the remand that the judge should deal with. Either there is going to be an issue as to whether or not those conclusions of the Court of Appeals should be revised because of the facts that were not then submitted and there may be other matters that should have been presented but were not considered on appeal or the limits of the trial are those outlined by the Court of Appeals.

As presently constituted, the proposed findings are discursive, they are argumentative, they contain a plethora of evidentiary fact, they engage in semantic controversies that lawyers of this cast and sophistication should be able to work out without the slightest difficulty, there is an inexplicable failure of any mutual effort to agree on substantive fact that is not reasonably controvertible, and nothing that has been submitted heretofore could be signed by me as a decision. The whole theory was to give me a decision that I could sign on behalf of the plaintiff or on behalf of the

defendant.

The case needs real pretrial effort and is not ready for trial and the procedure to clear up the matter is what I think is what we ought to spend our time on this afternoon.

I think I have got a very clear present understanding, subject to your own correction of my understanding, as to what the Court of Appeals set out in matters to be tried, and the proposed, findings ought to zero in on those matters. I just am not going to stand for any personal character vilification or vindication. I don't think that's got anything to do with it. Nobody is charging the First Boston with being this, that or the other thing and they don't have to spell out to me the lofty position of professionals in the investment banking trade. I don't see what that has to do with what we are going to try and adjudicate here. And the aspersions against any particular defendant or against the plaintiff can just be left out and let's get down to things that you would expect to see a judge sign when he gets through with a case consisting of findings of ultimate fact and conclusions of law that are warranted by those facts.

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1105A

why it should be consolidated or tried together, but it certainly will be, I should think, subsequently to the resolution of this controversy, before that controversy would be ready for being resolved, ready for resolution.

THE COURT: So that that should not detain us in the matter of getting to trial of this case?

MR. RYAN: No.

MR. LIMAN: That has has nothing to do with us, your Honor. I am speaking of Chris-Craft. I think that the argument was made that they shouldn't have to pay this woman in part because we were seeking to enjoin them here, but in the light of the way in which they have managed this company for a year I'm not seeking injunctive relief here. It wouldn't do me any good here to get back Piper. I am seeking damages. As to that I don't think I have anything to do with this case now. You can pay that woman as far as I am concerned.

MR. RYAN: Do I understand that to be an irrevocable position, Mr. Liman?

MR. LIMAN: You can understand that I am seeking damages here.

MR. RYAN: It would still seem to be appropriate, your Honor, that it should be tried after. It certainly wouldn't be ready -- it wouldn't be heard by the District

that score legally.

MR. LIMAN: Can I comment on the issue, your Honor? Because I think without getting ad hominem in this matter, just trying to be objective as to what the issue is, we charge that this concealment of the arrangement for the sale of the railroad was fraudulent and that it made the prospectus which was issued in competition with the Chris-Craft prospectus deficient.

It is an issue in our case with respect to this transaction. I confess the SEC has received the transcripts of examination which we have taken, the SEC has received from us, if not from elsewhere, the agreements that existed for the sale of this railroad, and there will be a common issue of fact on this railroad.

I don't have any of the information that the SEC has developed. I am prepared to proceed to trial in my case on this issue.

The question of relief is different. The SEC comes in and says they want to give the public stockholders certain relief. I'm here representing Chris-Craft, your Honor.

THE COURT: I thought that you wanted them to rescind 112,000 shares, the 112,000 share transaction.

MR. LIMAN: I want money now, your Honor.

THE COURT: I know your say that now. But the papers up to this point, and in the Court of Appeals talked about having Bangor Punta give back the 112,000 shares or tender or rescind.

MR. LIMAN: Not these shares that were involved here. The shares they got in the exchange offer, yes, your Honor. And at that time Piper was worth getting. But we lost that injunction to keep them from exercising control over Piper and they have consolidated their position, and I just don't think, with all the powers that this Court has, you could give effective injunctive relief that would put me in the position that I should have been in in August of 1969. That's why money is the only thing that is left.

The public shareholders would not have been in a position to control Piper, they are in a different position. They probably have claims, if the SEC is correct, for money damages, et cetera. But that is not my business. I am interested in trying this issue. It so happens that the SEC has the same factual issue and I am willing to cooperate in any procedure that your Honor enunciates here so that we won't have duplicated testimony before your Honor on it. This is one of these issues in which there will be a controversy. It involves

credibility of witnesses. A witness will testify that they had the deal and Mr. Ryan will challenge his credibility.

THE COURT: It seems to me that we ought to go forward to try and distill and crystallize the findings in the Chris-Craft case and let the SEC case and Mr. Ryan work in that vineyard, and if anything develops there that he wants to transfer into the Chris-Craft case, or if it appears that the two cases should be tried in common, we can take up the subject of additional findings and proposal in that connection so as not to unduly hold up the Chris-Craft case.

But I don't want this thing to become a basis for delay, the fact that the SEC has come in now, long after a lot of these events. It doesn't indicate to me that there is any justification for delaying the Chris-Craft case other than the possibility that it offers an opportunity for discovery of vital facts useful in the Chris-Craft case. If that happens, that is so much the better.

Now, what do we do about setting timetables of discussions between counsel without the supervising eye of a pretrial examiner or the Court and giving you as much latitude to see if you can't work into a better frame

Other than that I think that anybody looking at a piece of paper can agree on what it says, or looking at a deposition can agree on what the witness said, without making it necessary to go through deposition summaries and reading the whole deposition or other devices. And press releases, you can agree on what it says.

All of these schemes that you charge, they are in the background, they are not on paper. They are in somebody's mind, either the plaintiff's mind or the defendant's mind. If they had a scheme, the defendant had it in mind. If they didn't have it in mind, it is in the plaintiff's mind. So that that's the kind of thing we will try.

MR. PENNOYER: May I ask a question now? Since we learned for the first time, and I hope it is irrevocable, that damages is all they seek, I would think it appropriate that part of the ultimate findings be findings with respect to particular damages. In other words, we have a number of acts here.

THE COURT: There should be findings related to liability and findings related to damages, and the method of the computation of the damages should be shown, this isn't like an arm off or a leg off with pain and suffering. You know, you can account for money

damages in a securities case. It is not just a broad sweep of the pen.

MR. LIMAN: I think the Smith Barney case sets the standard for damages and the amount we paid for our stock is something which is basically indisputable.

THE COURT: Then put it down in your finding. If you are right, you will get it. If you are wrong, you won't. That makes it very easy.

MR. PENNOYER: I don't think it is going to be altogether as clear as your Honor suggests, because while it may not be a leg off case with pain and suffering, we do have some problems of causation here that can be very difficult. But at least I do think we should have a basis --

THE COURT: All right, the approximate causation and any other nexus that you might have will be indicated by the controverted findings. The plaintiff will say that the defendant was responsible for this loss. The defendant will say you might have lost your money but not on account of me.

MR. LIMAN: I think the problems --

THE COURT: That is no reason why the defendant shouldn't say you lost your money. That is a fact that can be agreed upon. Look at his books, look over his

of the things that set up barriers at the present time.

What I get out of this statement of yours, Mr. Liman, is that I should consider, revise the thought of the Court of Appeals that there are only two occurrences which form the basis of Chris-Craft's complaint, and, secondly, that the case is a straight non-jury damage case rather than an equitable suit for injunction as a primary matter.

MR. LIMAN: That's right.

THE COURT: All right.

- - -

your Honor.

1112A

THE COURT: Please, don't let us use words to hide a meaning. I have asked you: are there any writings that emanate from the then chairman with respect to bringing on proceedings under the rule against those particular purchasers?

MR. KUSHNER: Your Honor, I will have to get you the answer to that. I don't know.

THE COURT: All right. When we get the answer to that, we will find out what we will do about this.

MR. RYAN: There may be a memorandum of the meeting which could be helpful.

THE COURT: An internal memorandum which merely expresses the cross-current of conversation within that organization, to my mind, is not evidence.

MR. RYAN: Your Honor, may I please state my position?

THE COURT: Yes.

MR. RYAN: Your Honor, the only effective relief the complaint seeks is an injunction against Bangor Punta from continued violation of the securities laws, and it alleges that we, Bangor Punta, has a propensity to violate the securities laws.

One of the propensities is the so-called viola-

tion of 10 (b) (6). I want to be able to establish, your Honor, that right in the Commission there was a dispute as to whether 10 (b) (6) applied to these purchases. Therefore, when they talk about having a propensity, it is a question of reading the rule book as to who you are talking about.

THE COURT: It seems to me that what you are asking them to do is to give you an opinion on the law.

MR. RYAN: No. They make the allegation that we have a propensity to violate the law.

THE COURT: Let me ask this question: Is there any basis for a concession on the part of the Commission that there was a difference of opinion within the official branch of the Commission as to whether or not such a thing was a violation?

MR. KUSHNER: I will also explore that, your Honor.

THE COURT: All right.

MR. KUSHNER: Your Honor, may I add that I am willing to disclaim right now, if it will moot the question, that under the propensity section the complaint does not mention any 10 (b) (6) violations. The body of the complaint does not mention any 10 (b) (6) violations, and we will not offer proof of any 10 (b) (6) violations.

THE COURT: What you are saying is that you irrevocably disclaim any propensity to violate 10 (b) (6)?

MR. KUSHNER: Yes.

THE COURT: Is there anything wrong with that?

MR. RYAN: That is fine.

THE COURT: Does that satisfy Item No. 1?

MR. RYAN: Yes, your Honor.

THE COURT: All right. Item 2. What do you want to disclaim about Item 2 that will satisfy Mr. Ryan?

MR. KUSHNER: Your Honor, Item 2 relates again to 10 (b) (6), and I don't know why it is necessary in view of my disclaimer.

MR. RYAN: It is a continuation again, your Honor, of the fact that 10 (b) (6) was an open question.

THE COURT: You have now gotten it as a closed question. You are not a 10 (b) (6) violator.

MR. RYAN: Fine.

MR. LIMAN: That is not what he said, your Honor.

THE COURT: As to the Commission.

MR. LIMAN: The Commission claimed that the Second Circuit found that they were a 10 (b) (6) violator.

THE COURT: I don't think you have any standing to say what the Commission is claiming in its complaint.

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of an allegedly unlawful act, the Commission is barred from seeking injunctive relief as to the future because it is politically or otherwise deviously motivated.

Does that put it straight?

MR. RYAN: Your Honor, I am not going to be able to find cases like that. If that is what the ruling is, your Honor, I am perfectly content. I don't need the examination. If that is the law of the case, if that is what they have to show, your Honor, then I don't need --

THE COURT: That is what you have to show, not they.

MR. RYAN: They are coming in and asking for an injunction against us.

THE COURT: That depends entirely upon your "propensity."

MR. RYAN: I thought we eliminated propensity.

THE COURT: We are talking of propensity as to the future.

MR. RYAN: As long as we are not talking about what they claim is our propensities in the past. If we are talking about what the future is, it seems to me that that is their responsibility.

THE COURT: Their responsibility is to show,

if there is no past conduct, that there is need for equitable relief as to the future. I think that all came up in the Parke Davis case that way, did it not?

MR. RYAN: Essentially, your Honor.

THE COURT: How about that, Mr. Liman? You know all the cases.

MR. LIMAN: This question of equitable relief, when it comes to the SEC --

THE COURT: Not the SEC. I am talking about equitable relief as to the future and the need for an injunction.

MR. LIMAN: I think they have a law unto themselves when it comes to injunctive relief. I have been on the unhappy end of that in a number of cases. They all seem to say that if you can prove that somebody wilfully violated the law you get an injunction. I think that's right.

THE COURT: I don't think that that is the law. It seems to me that they are entitled to have requited the past, but they have to show that there is danger of recurrence in the future in order to get an injunction as to the future.

It seems to me that I wrote something on that in the Government's case against Uni-Royal where I denied

(Plaintiff's Exhibit 24 received in evidence.) 1117A

MR. KUSHNER: I offer as Exhibit 25 a copy of a registration statement filed by Bangor Punta Corporation with the Commission on July 18, 1969.

MR. RYAN: No objection.

(Plaintiff's Exhibit 25 received in evidence.)

MR. KUSHNER: I offer as Exhibits 26, 27 and 28, respectively, the complaint, stipulation and consent and judgment for permanent injunction in the action entitled Securities and Exchange Commission vs. Bangor Punta Corporation filed in the United States District Court for the District of Columbia on May 26, 1969.

MR. RYAN: No objection, your Honor.

THE COURT: Off the record a minute.

(Discussion off the record.)

(Plaintiff's Exhibits 26, 27 and 28 received in evidence.)

MR. KUSHNER: May I inquire through the Court whether Mr. Ryan will stipulate that during the period August 7, 1969, to August 27, 1969, there was trading in the over-the-counter market of the Bangor Punta warrants

covered by Bangor Punta's registration statement which became effective on July 18, 1969?

MR. RYAN: That is correct, your Honor.

MR. KUSHNER: Your Honor, the Commission rests its case.

MR. RYAN: Does your Honor wish to hear motions addressed to the Commission's case now?

THE COURT: I think you should make your motions but you need not argue them at this time.

MR. RYAN: I move to dismiss the complaint of the SEC in this matter on the grounds that they failed to prove a prima facie case, your Honor.

THE COURT: Decision reserved.

MR. RYAN: Thank you, your Honor.

MR. KUSHNER: Your Honor, Chris-Craft is about to present its direct case and I understand there will be no testimony regarding the railroad, which, as the Court knows, is the sole transaction in the Commission's complaint, and with the Court's permission, I would like to be absent during Chris-Craft's direct case and I will, of course, return for the defendants' case.

THE COURT: Are you going to present a defense to this SEC claim?

MR. RYAN: Yes, your Honor.

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Honor's time with the marking here. But I think for present purposes to follow the direct testimony your Honor might want to have the book before you.

There is an index to it, which I have given to counsel, and again I will make the formal offer when everybody has a chance to decide whether to object -- I don't think there will be objections -- or whether they want to make other offers to qualify or supplement this offer.

I would then proceed with my first witness, your Honor, Mr. Burnham.

I. W. B U R N H A M, II, called as a witness by Chris-Craft Industries, Inc., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Burnham, what is your occupation?

A Investment banker, stock broker.

Q What firm are you with?

A Burnham & Company.

Q What is your position with Burnham & Company?

A I am the senior managing partner.

Q How long have you been with Burnham & Company?

A I founded the firm on April 1, 1935.

Q How long have you been on Wall Street?

A Since September, 1931.

Q What is the nature of Burnham & Company's business?

A Well, it is a very broad, diversified business of investment banking, underwriting, making markets, stock brokerage. We cover nearly all facets of the business with the exception of commodities.

Q What stock exchanges are you members of?

A Nearly all: New York Stock Exchange, American Stock Exchange, Pacific Coast, Midwest, Philadelphia, Baltimore, Washington Stock Exchange, and the Boston Stock Exchange.

Q Did your firm ever act as underwriter for any company headedby Herbert Siegel?

A We bought General Artists public some years ago and Herbert Siegel at that time I believe was chairman of the board.

Q In January of 1969 were you a shareholder of Chris-Craft?

A To the best of my recollection, I was.

Q What about Burnham & Company?

A I think Burnham & Company was also at the time.

Q Do you know C. Leonard Gordon of Chris-Craft?

A I do.

Q How long have you known him and in what connection?

A Well, I primarily knew him as counsel to our firm. He was one of the lawyers in Marshall Bratter Greene Allison & Tucker who did work for Burnham & Company and I would say I know Len, I would imagine, nearly ten years.

Q Mr. Burnham, are you aware that on January 23, 1969, Chris-Craft made a cash tender offer for some Piper stock?

A Yes, I am.

Q Were you aware of it at the time that it was made?

A I read about it.

Q During the period that this tender offer was outstanding, did you have a conversation with Mr. Gordon?

A How long was the tender offer outstanding?

Q Until February 3.

A I had a conversation with Mr. Gordon --

A Can you fix the date?

A Yes, I think I can. It was on Thursday, January 30.

Q Where did the conversation take place?

A Mr. Gordon called me on the telephone on Thursday, the 30th, and I think we had a conversation in my office on Friday, the 31st.

Q Well, start with the telephone conversation and

tell the Court what Mr. Gordon said to you and what you said to him.

A Well, to the best of my recollection, he explained to me that Chris-Craft might get quite a bit more than 300,000 shares of Piper and that they might need financing to pay for this stock and he wondered whether Burnham & Company could arrange some financing ratherquickly so that they would have the money.

Q What did you say to him?

A I said I thought we could.

Q What happened at the meeting in your office the following day?

A He came down so we could discuss the whole thing -- we didn't know too much about it -- so we had our facts straight, and we went to work on it.

Q Did Mr. Gordon mention any figure as to how much financing he wanted?

A I think he wanted in the area of $22,000,000.

Q Did Burnham take any steps to arrange financing for Chris-Craft?

A We did. We worked over that weekend and we told Mr. Gordon on Monday, February 3, that we had arranged with banking friends of ours in London for a $25,000,000 loan to the Chris-Craft Company for the purpose of making the acquisi-

tion of the Piper shares.

Q Did you tell Mr. Gordon the name of the firm?

A I did.

Q What was the name of the firm?

A Singer & Friedlander.

Q Is that a London merchant banker?

A It is a very substantial London merchant banker.

Q Did you discuss the terms with Mr. Gordon?

A We did.

Q Do you remember anything about those terms today?

A Well, to the best of my recollection, it was an interest rate of, roughly, 7 per cent and,depending upon the length of time of the loan, ranging,I believe, from 12 to 24 months, warrants were to be issued by Chris-Craft with a maximum warrants, I think,in the area of 25,000.

I thought it was very favorable terms.

Q Did you express that opinion to Mr. Gordon?

A I certainly did.

THE COURT: What were the terms of the warrants?

THE WITNESS: I do not remember, sir, but to the best of my recollection, they were not below the market.

Q Did there come a time when Mr. Gordon told you that they did not need the loan?

A Yes.

Q Was that after the tender offer closed?

A That was in the latter part of February.

Q Did you follow the press accounts of the contest for the control of Piper in 1969?

A I did.

Q I am going to show you the May 8, 1969, press release of Piper, which is quoted in full and attached to finding 69, your Honor. Did you read the report of this announcement at or about the time that it was issued, May 8, 1969?

A I remember reading it.

THE COURT: Sustained.

Q Mr. Burnham, have you heard the term "value" used in Wall Street in terms of offerings of stock?

MR. RYAN: Objection.

MR. PENNOYER: Objection.

THE COURT: Overruled.

A Yes, I've heard of that.

Q And does that word have an ordinary meaning on Wall Street?

MR. RYAN: Same objection, your Honor.

THE COURT: Overruled.

A Yes. I think that --

THE COURT: "Yes" is the answer.

Q And what is the meaning?

MR. RYAN: Objection, your Honor.

THE COURT: Sustained.

Q Can you tell me, in your opinion, Mr. Burnham, what the word "value" normally means on Wall Street?

MR. RYAN: Objection, your Honor.

Q (Continuing) In the context of an exchange offer or an offering of securities.

MR. RYAN: Objection, your Honor.

THE COURT: Did they mean anything other than the dictionary meaning, Mr. Burnham?

THE WITNESS: I can't tell you, your Honor, exactly what the dictionary says. I know what they mean in Wall Street, in my opinion. I mean --

THE COURT: Well, there isn't any language --

THE WITNESS: The word "value" --

THE COURT: It isn't a language unto itself, is it?

As you have testified, "value" has the ordinary meaning.

THE WITNESS: That's right.

THE COURT: I take you at your word.

"Value" has the ordinary meaning. I don't think I need an expert to tell me what the ordinary meaning is.

MR. LEHAN: I asked him whether it had the ordinary meaning on Wall Street, your Honor. This is apparently a contest here between us and the other side as to what these words would mean, and in fact the Court of Appeals decision raised that question.

THE COURT: I am taking it only on the basis of what the witness has said. He has laid down the ground rules. He said that it has the ordinary meaning and that an expert is not required to infuse it with any description of what the ordinary meaning is, and the

witness has just said that he agrees with that.

BY MR. LIMAN:

Q Mr. Burnham, do you know what the dictionary meaning of "value" is?

A I think I do, but I would have to see it.

Q Is "value" used as part of your profession as a stockbroker?

Is that the term that you use from time to time?

A In my profession "value" generally means to me market value.

Q Now in determining market value when there is an offering -- assume that the offering is said to have a market value of a certain amount.

During what period of the offering would you, in your profession, conclude that it would have that market value?

MR. RYAN: Objection.

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Have you ever entered into transactions in which an offering was supposed to have a certain value?

A Yes.

Q And during what period of time was the value measured?

MR. RYAN: I assume this refers to a specific transaction.

THE COURT: Well, Mr. Liman, I think that you have now put enough questions so as to raise any point that you wish to raise at any other time on this subject, and over the objection of the defendants, on which I reserve decision at this time:

(To the witness) Mr. Burnham, will you tell me what you understood this paragraph to mean?

THE WITNESS: Sir, you want me to tell you what I understood this paragraph to mean?

THE COURT: Yes. And then you tell me whether that is an understanding that is peculiar to you or whether you consider a reasonable individual in Wall Street would so understand it.

THE WITNESS: I think this means that the package of securities would have a value that if I was a Piper shareholder, they would be $80 to me, that Piper itself would be worth $80 and that the market would be big enough to prove it.

THE COURT: What effect do you give to the words: "In the judgment of First Boston"?

THE WITNESS: Not much, sir. I think the market proves it.

pj-6 Burnham-direct

THE COURT: Did that indicate to you --

THE WITNESS: And I would say the same about Burnham & Company. I think that the market is the proving ground. I don't mean anything impertinent about First Boston. If he set the value -- the real value is proved by the market place in our business.

THE COURT: So you cast out the words "in the judgment of First Boston"?

THE WITNESS: It would mean very little to me.

BY MR.LIMAN:

Q Would you attach any significance to the fact that First Boston was willing to put its name on the valuation?

MR. RYAN: Objection, your Honor.

THE COURT: I will take this. I will reserve decision on your objection.

MR. PENNOYER: I join in that objection as irrelevant.

THE WITNESS: Do you want me to answer that, sir?

THE COURT: Yes.

A I wouldn't attach any more significance to it than if we put it. I still say that the market is the

testing ground of a valuation in an offering.

THE COURT: So you would say that the language "in the judgment of First Boston Corporation" is mere surplusage, as you would read it?

THE WITNESS: Yes, sir.

Q Now you testified that the ~~value~~ offer would have a ~~offer~~ value, so that the Piper shares would have a value of $80; is that what you said?

A That would prove something to me.

Q And why is that?

A Because that is proved by the market place. That is real value. That is value you can sell, you can create, the dollars.

Q Are you saying to the Court that when you read this language you assumed that the offer would be of such a nature that the Piper shares would trade at $80?

MR. PENNOYER: Objection.

MR. RYAN: Objection.

THE COURT: I think the form of the question is objectionable.

I think I understand what he is saying to me in his previous responses.

Q You referred to volume in giving your prior answer to the Court. Would you explain that?

A I can explain it very easily, that if you sold out as many margin accounts as I may have done in my lifetime you know the only value is what you actually get for something when you go to sell it. Now that is value.

Q And what do you mean when you said that there would have to be significant volume -- I didn't catch your actual words.

A Well, a quotation is not a market. Maybe for ten shares it is nothing.

Q Now for how long a period did you assume that somebody would need to sell shares, if you made such an assumption, during the offering?

A Well, in an offering I would think that to prove a valuation, that at least three or four days.

Q And if the offering was subject to subsequent stockholder approval, would that have an effect on your judgment as to the period of valuation?

MR. PENNOYER: Objection.

MR. RYAN: I assume this whole line of examination by Mr. Liman is subject to the standing objection which you reserved decision on. That is why I am not objecting to each specific question.

THE COURT: Yes. I think that Mr. Burnham

is a sufficient expert to give us the testimony without being led along legalistic lines, and I think that the questions to Mr. Burnham ought to be so framed as to permit the witness to give the evidence that is being inquired into.

Q Well, Mr. Burnham --

THE COURT: I sustain that objection as to form.

Q Mr. Burnham, I will ask you to assume that the offering of Bangor Punta was subject to stockholder approval, and I will ask you to further assume that the offering was closed prior to the obtaining of stockholder approval, and I will ask you to express your opinion as to how you would have understood the term "value" in that context.

MR. PENNOYER: Your Honor, does the question relate to May 8th, the date of the press release, or is it intended --

I object, your Honor, unless that matter is clarified. In other words, I believe the witness has the press release before him. I don't think any such matter is stated in that document.

MR. LIMAN: No. They are not stated in the document.

THE COURT: Well, the only inquiry, Mr. Liman, is whether your assumptions relate to May 8th or go beyond May 8th.

MR. LIMAN: My assumptions go to the question of whether the words of the press release would have been understood in the sense that First Boston has now testified they meant them.

THE COURT: No, please. Don't put that into your point. I don't want to incorporate other testimony at the present time.

Just go ahead with your questioning. I think we will be better off if we don't engage in colloquy.

THE WITNESS: What was your question?

BY MR. LIMAN:

Q My question was: I asked you to assume that the offering was subject to stockholder approval of the offering company, Bangor Punta, and that the offering was closed prior to the obtaining of stockholder approval.

A Well, in my experience that is a rather unusual procedure. As a general rule I would judge the offerings after stockholder approval was granted, because in our business the exemptions for arbitrage and all types of transactions after stockholder approval are granted when there is no risk that the person who tenders shares

is going to get a perfectly good, valid delivery.

And so trading stock before stockholder approval, that is something -- I am not a lawyer -- that is a rather unusual happening in our business.

Q Now, Mr. Burnham, I want your opinion on another subject.

I want youto assume that Bangor Punta, as the holder of over 50 per cent of the common stock of Piper, has the power under Pennsylvania law to compel a merger between Piper and Bangor Punta.

I want you to assume further that Chris-Craft, as a minority stockholder, with 697,495 shares, or 42 per cent of the stock of Piper, has the right under Pennsylvania law to obtain an appraisal in the event of a merger,

And I will ask you for your opinion as to the marketability of Chris-Craft's block of stock in Piper under those circumstances.

MR. RYAN: I object to the question, your Honor.

MR. PENNOYER: I join in that.

THE COURT: Read the question.

(Question read.)

THE COURT: You may answer.

A Mr. Gordon first called me, to my recollection, January 30th.

Q Yes.

And as I understand it he indicated to you that Chris-Craft might get considerably more than the 300,000 shares for which they tendered?

A Correct.

Q And this was a telephone conversation, is that right?

A Yes, sir.

Q Did he tell you why he expected to get or that he might get more than 300,000 shares?

A I believe he said that they were going to be willing to take anything they could get, and he might get considerably more than 300,000 shares.

Q My question is: On January 30th, did he tell you why he expected that he might get more than 300,000 shares?

A I don't believe he told me why.

Q But would it refresh your recollection if I suggested that he told you the activities of the Piper people were driving the market price of the Piper stock down?

MR. LIMAN: The question is: Did he tell him

that?

Q (Continuing) Does that refresh your recollection as to whether he indicated why he thought he might get more than 300,000 shares?

MR. LIMAN: Objection to the form of that question.

THE COURT: That objection is overruled.

A Well, that was two years -- that's quite a long while ago. I don't rememberthe details. He was talking to me about getting money, period, and I wasn't asking questions about the whys and the wherefores.

I wanted to know how much he wanted and Iwanted to get to work to see if I could get it for him.

Q So you have no recollection at this time of any conversation as to why he had this expectation on January 30th?

A I have no recollection of why that I can remember, but the fact that he wanted more was very obvious to me, that he was right to want more.

Q You say that it was obvious that he was right to want more?

A Sure.

Q Why?

A Because I don't think there is any question in

A In a matter like this you really don't need it. You really don't need any writing at all. These people dealt in millions for years, and if they say they are going to provide that kind of money, you can rest assured it's going to be there. You don't even need it.

Q So your answer is that there is no writing --

THE COURT: I think what Mr. Pennoyer is getting at is:

Is there any cable or Telex or other communication that indicates the interest that you say Singer & Friedlander had?

THE WITNESS: Yes, sir.

Your Honor, you know, I was called with very little preparation and I did look at Mr. Woudhuysen's file this morning, and there is a letter from Singer & Friedlander, if I recollect, in late February, indicating that he was sorry that he hadn't taken the money, that Chris-Craft hadn't taken the money, and a lot of these conversations had to be over the telephone over that weekend to explain why it was needed, what the purpose was for, and to negotiate a deal.

But they came back very quickly on it and there is enough that I saw in his file that I would say there wasn't any question about it.

THE COURT: What was this: a plan to margin these securities as they would be picked up there in the market?

THE WITNESS: No, sir. This was going to be a direct loan, a short-term loan to Chris-Craft.

THE COURT: On what security?

THE WITNESS: On the security of the company, as I recall it.

THE COURT: On a signature? Is that the way you recall it? On a signature, a loan for $22 million?

THE WITNESS: This was going to be a loan by a group of British banks, I would assume, because that is the general form, headed by Singer & Friedlander. It would have been a binding general obligation of the Chris-Craft Company and would have matured, as I recall, either from six months or twelve months to a maximum of 24 months and would therefore have probably come ahead of most everything at the time that they had on their balance sheet, other than the demand loans of banks.

THE COURT: Did you ask for and get a current financial picture of Chris-Craft?

THE WITNESS: Well, we were working very fast. I think we went from what we had in that time in the public documents.

THE COURT: The public documents were stale information, weren't they, in January and February, Mr. Burnham?

MR. LIMAN: Objection to that, your Honor.

THE WITNESS: No, we had --

THE COURT: What was the date of the information you used?

THE WITNESS: Chris-Craft published their quarterly figures.

THE COURT: When?

THE WITNESS: And they were out in the third quarter, and I doubt that their annual report --

THE COURT: Were the fourth quarter figures out?

THE WITNESS: I would very much doubt that. I don't think they were operating on that fiscal year at the time. I think the fiscal year in '69 may have ended in August. I am not sure.

THECOURT: I am interested to know what current financial information you had that would lead you to recommend to your associates in London a loan of as much as 20 or 22 million dollars on a current basis on the mere signature of the corporation.

THE WITNESS: Well, Chris-Craft at that time, and

even today, is a very well-known corporation.

THE COURT: Is that the basis of loans: because the corporation is well known?

THE WITNESS: No, no, but if I recall correctly -- and now you are testing my memory -- that in 1969 Chris-Craft was operating a quite profitable business and its stock was selling at a very high price in relation to the present, and many of the problems that it has since gotten into it wasn't in; and had this loan been made and had they bought control of Piper, the situation of Chris-Craft financially, your Honor, would have been much better.

THE COURT: Mr. Burnham, I am trying to get one simple point.

I want to know if a bank lends $22 million to a company on a simple note, without getting current information on its commitments.

THE WITNESS: I am sure they would have asked for something had Chris-Craft come back and said, "We want the money."

I am sure they would have wanted an updating of the published records and want to know if anything had occurred to change the financial condition.

But based on what was available to them at the

time they indicated that they would go.

THE COURT: Did they indicate that they would go or did they indicate that they would consider it if and when the proper information was supplied and if and when the proper request was made?

THE WITNESS: Well, Mr. Woudhuysen handled the conversation, but my understanding was that they were ready to go.

I felt quite definitely that they had a commitment and it would only be subject to some major change in Chris-Craft's financial position that they weren't aware of.

BY MR. PENNOYER:

Q Mr. Burnham, as I understand it, you personally did not have any conversations with Singer & Friedlander.

A I can't honestly tell you that I didn't. I think I did call Francis Hock, who was the senior partner of Singer & Friedlander, and keep in mind that these were international bankers that could make their minds up very quickly on corporations that are listed companies, like Chris-Craft was, and I think I discussed with him what was going on, and then turned it over to Mr. Woudhuysen.